

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT

**COPY**

CHURCH OF SCIENTOLOGY,	.	Superior Court
INTERNATIONAL, etc.	.	Case No. BC 052-395
	.	
Plaintiff,	.	
vs.	.	
	.	
GERALD ARMSTRONG, et al.,	.	
	.	
Defendant.	.	Los Angeles, California
	.	May 26, 1992
.....	.	10:05 a.m.

APPEAL FROM THE SUPERIOR COURT OF LOS ANGELES COUNTY

THE HONORABLE RONALD M. SOHIGIAN, PRESIDING  
DEPARTMENT 88

TRANSCRIPT ON APPEAL

**RECEIVED**

**OCT 16 1992**

**HUB LAW OFFICES**

COURT RECORDER:  
J. W. CRUSE

TRANSCRIPTION BY:  
PARRIS TRANSCRIPTS  
P.O. Box 41754  
Los Angeles, Ca 90041-9998  
(213) 254-4157

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

## APPEARANCES:

## FOR THE PLAINTIFF:

ANDREW WILSON  
235 Montgomery Street  
San Francisco, California  
(415) 391-3900

LAURIE J. BARTILSON  
Bowles & Moxon  
6255 Sunset Boulevard  
Suite 2000  
Hollywood, California 90028  
(213) 661-4030

## FOR THE DEFENDANT:

PAUL MORANTZ  
P.O. Box 511  
Pacific Palisades, California  
90272  
(310) 459-4745

✓ FORD GREENE  
Hub Law Offices  
711 Sir Francis Drake Boulevard  
San Anselmo, California 94960  
(415) 258-0360

GRAHAM E. BERRY  
Lewis, D'Amato,  
Brisbois & Bisgaard  
221 North Figueroa Street  
Suite 1200  
Los Angeles, California 90012  
(213) 680-5007

ORIGINAL FILED

~~OCT.~~ <sup>J.V.</sup>  
~~SEP~~ 14 1992

LOS ANGELES  
SUPERIOR COURT



1 PROCEEDINGS BEGIN AT 10:05 A.M.

2 (The Court is called to order)

3 THE COURT: Let's to go Case BC52395, Church of  
4 Scientology versus Armstrong.

5 MR. WILSON: Good morning, Your Honor. Andrew  
6 Wilson, Wilson Reign and Campilongo, and Laurie Bartilson,  
7 Bowles & Moxon, on behalf of the moving party.

8 MR. MORANTZ: Good morning, Your Honor, Paul Morantz  
9 and Ford Greene for Defendant Armstrong.

10 THE COURT: Same attorneys are going to argue who  
11 made the oral presentations previously, right?

12 MR. WILSON: Yes.

13 MR. MORANTZ: That is correct.

14 THE COURT: All right. Go ahead with the submittal  
15 of evidence. What I'll do, in view of the way this case has  
16 been presented to me in the briefing, is the following: I  
17 will take a list of all the evidence that the plaintiff wants  
18 to put in; take a list of all the evidence that the defendant  
19 wants to put in and we'll go back and make a determination  
20 about what matters will be received and what objections will  
21 be sustained and overruled. So let's just have the  
22 proponent's listing first.

23 MR. WILSON: Thank you, Your Honor. The evidence  
24 is, No. 1, the agreement which Mr. Armstrong and plaintiff  
25 entered into on -- in December of 1986, which appears as  
26 Exhibit A to the Complaint. I am also going to give you, Your  
27 Honor -- there are -- it has been submitted in a number of  
28 places --

1 THE COURT: All right. All we need is just one.

2 MR. WILSON: Okay. I think I should, though, give  
3 it in other places because there's -- there -- maybe there's  
4 an objection, I believe, to the fact that it's an exhibit to  
5 the Complaint. It's also Exhibit D to the Declaration of Mr.  
6 Armstrong, dated March 16, 1992; it's Exhibit D to the  
7 Supplemental Opposition Exhibits submitted by Mr. Morantz; and  
8 it's Exhibit A to the Declaration of Mr. Graham Berry, dated  
9 May 7, 1992.

10 Second, the Declaration of Lawrence E. Heller is  
11 offered. This relates to the circumstance --

12 THE COURT: Date of filing?

13 MR. WILSON: I believe that is -- if you'll give me  
14 just a second, Your Honor.

15 THE COURT: Sure. Or date of declaration, if that's  
16 all you've got. Whatever it is.

17 MR. WILSON: I don't have it in my note here; I made  
18 a list of all the evidence, and I neglected to put that in.  
19 If you want to leave that blank for a second, there's another  
20 declaration of Mr. Heller that I want to offer, as well.

21 THE COURT: Uh-huh.

22 MR. WILSON: That is the Declaration of Mr. Heller  
23 dated March 2nd, 1992, and Exhibits A and B thereto, which are  
24 a videotape of the signing of the agreement and a transcript  
25 of the videotape of the signing of the agreement.

26 If I may just continue --

27 THE COURT: Go ahead.

28 MR. WILSON: I will do that. Second, the

1 establishment of the payment of the settlement amount to Mr.  
2 Armstrong, that is in the verified Complaint which I've  
3 already offered as well --

4 THE COURT: You did not offer the verified  
5 Complaint.

6 MR. WILSON: I'm sorry. I've listed it. You're  
7 right. I stand corrected.

8 Mr. Armstrong's supplemental evidence which is  
9 Exhibit C, which is a three-page document which begins, "We  
10 the undersigned agree and acknowledge." Next --

11 THE COURT: What is it and where is it?

12 MR. WILSON: Would you give me a minute, Your Honor?  
13 I had this organized in my briefcase and in getting it out I--

14 THE COURT: Sit down, sir.

15 MR. WILSON: Your Honor?

16 THE COURT: No. There's somebody behind you  
17 standing up. I don't want anybody in the audience section of  
18 the courtroom standing up. The attorneys can either stand up  
19 or sit down, depending on what's most comfortable for them.

20 MR. WILSON: This is Exhibit C --

21 THE COURT: Yes.

22 MR. WILSON: -- to the exhibits to supplementary  
23 opposition to motion for preliminary injunction. Date, 5-14-  
24 90 --

25 THE COURT: Which volume? One or two?

26 MR. WILSON: It's volume -- it doesn't have a volume  
27 index on it, Your Honor. I think it's the only one that was  
28 submitted with both Mr. Morantz and Mr. Greene's names on the

1 caption.

2 THE COURT: Oh. It's their side. Okay.

3 MR. WILSON: It's their side.

4 THE COURT: Go ahead.

5 MR. WILSON: Okay.

6 THE COURT: That's your fourth proffer.

7 MR. WILSON: Right.

8 THE COURT: What's the fifth?

9 MR. WILSON: Next, Exhibit 1-E to the Request, our  
10 Request for Judicial Notice, filed in support of our Motion  
11 for Preliminary Injunction, which is a transcript of  
12 proceedings in Religious Technology Center vs. Yanny.

13 Next --

14 MR. GREENE: The date of the proceedings, Counsel?

15 MR. WILSON: I don't have it on my index here.

16 THE COURT: Go ahead.

17 MR. WILSON: I will give it to you in a minute.

18 (Pause)

19 MR. WILSON: While Ms. Bartilson is looking for that  
20 date, I have the date of the earlier declaration of Mr. Heller  
21 that we were going to supply.

22 THE COURT: Sure.

23 MR. WILSON: And it was submitted in support of the  
24 Amended Motion, and the date of filing is May 7, '92, and the  
25 date of the Declaration is January -- it's left blank on the  
26 Declaration. Anyway, the date of the Declaration's signing  
27 page is blank day of January, 1992.

28 THE COURT: Okay.

1 MR. WILSON: If I might, I'll give you the next one  
2 and we can supply that date.

3 THE COURT: That's fine.

4 MR. WILSON: The next one is a Declaration of Gerald  
5 Armstrong which was submitted in that case, the RTC versus  
6 Yanny case, dated July 19, 1991, and that is Exhibit 1-F to  
7 the Request for Judicial Notice which I earlier referred to.

8 Next is really the -- we have two paragraphs that  
9 we're referring to there -- and so the next one is another  
10 paragraph of that declaration which I just referred to.

11 THE COURT: Your current proffer is of the  
12 declaration in its entirety?

13 MR. WILSON: Right. In its entirety.

14 THE COURT: Go ahead.

15 MR. WILSON: I'm sorry, I have my notes organized  
16 here as to points. The next are declarations prepared and  
17 executed by Mr. Armstrong which were filed by Mr. Yanny in  
18 opposing a preliminary injunction motion in that case, and  
19 those are Exhibits 1-J and 1-K to the request for judicial  
20 notice which I've earlier referred to.

21 To go back to the date of the transcript which Mr.  
22 Greene requested, the date of that transcript is August 6,  
23 1991. The date of the hearing was August 6, 1991. That's of  
24 the transcript of Joseph Yanny which we earlier proffered.

25 Next is a letter by Mr. Armstrong to Mr. Eric  
26 Lieberman dated August 21, 1991, which is Exhibit 2-B to the  
27 evidence submitted in support of the preliminary injunction  
28 motion. This also appears as exhibit -- an exhibit to Mr.

1 Yanny's counsel's evidence which he submitted in support of  
2 his amicus brief, and I will give you that reference.

3 (Pause)

4 MR. WILSON: And that is Exhibit M to Mr. Berry's  
5 declaration -- I'll give you the title of the pleading:  
6 Declaration of Graham E. Berry, to all evidence in support of  
7 amended amicus curiae brief in opposition to plaintiff's order  
8 to show cause re preliminary injunction and supporting  
9 exhibits.

10 THE COURT: Could you wait for just one second.

11 (Pause)

12 THE COURT: Please go ahead. This will be your  
13 ninth item.

14 MR. WILSON: Thank you, Your Honor. Next, the  
15 Declaration of Gerald Armstrong which is Exhibit 1-L to the  
16 evidence in support of the preliminary injunction motion.  
17 Paragraph 18 of that declaration.

18 THE COURT: What was the date of the Armstrong  
19 declaration that you're referring to now?

20 MR. WILSON: The date of the Armstrong declaration  
21 is --- I'll give you that in a second, Your Honor.

22 THE COURT: Okay. Go ahead with whatever else you  
23 wanted to do.

24 MR. WILSON: Okay. The next is a Declaration of  
25 Ford Greene, which is Exhibit M to the evidence in support of  
26 the preliminary injunction motion.

27 THE COURT: The date of that declaration?

28 MR. WILSON: I'll give you that date in just a



1 second, Your Honor.

2 THE COURT: Okay.

3 MR. WILSON: The date of the Armstrong declaration  
4 is September 3 of '91. And the date of Mr. Greene's  
5 declaration is September 4, 1991.

6 Next is the Declaration of Ms. Laurie Bartilson,  
7 which is Exhibit 5 to the evidence in support of the motion  
8 for preliminary injunction. That is dated January 29 of 1992.

9 Next is, and I think this is the last one, the  
10 deposition -- pages from the deposition testimony of Mr.  
11 Armstrong, which are -- which appear as Exhibit E to the  
12 Declaration of Mr. William Drescher -- and I'm getting the  
13 date of that declaration for you now.

14 (Pause)

15 MR. WILSON: The date of the tran-- of the  
16 deposition is March 17 of '92. And the date of the  
17 declaration -- is May 19, 1992, and it appears -- I don't know  
18 whether I said this already -- it appears as Exhibit -- it  
19 appears in the exhibits in support of plaintiff's reply to  
20 defendant's opposition to motion for preliminary injunction.

21 And, Your Honor, the procedure that I've followed is  
22 that there may be certain rebuttal evidence that we would  
23 offer which would depend on whether our evidentiary objections  
24 to certain of the material submitted by the defendants are  
25 sustained or overruled.

26 THE COURT: Just a second. Let me get you to hang  
27 on for just a second.

28 (Pause)

1 MR. WILSON: That concludes the evidence --

2 THE COURT: Your -- the fourth item in your proffer,  
3 this thing, the three-page document: do you want to describe  
4 that in more --

5 MR. WILSON: Yes. This is a document which appears  
6 in Armstrong supplemental evidence, Exhibit C.

7 (Pause)

8 MR. WILSON: And I have to say, Your Honor, I'm  
9 uncertain as to whether it has been properly labeled, because  
10 there's no tabs, and it's a handwritten "C," but there's a --  
11 there's an exhibit stamp that appears to have been crossed  
12 out. Anyway, I will -- let me describe it so that the record  
13 is clear.

14 It is a three-page document. It begins with the  
15 language,

16 READING:

17 "We, the undersigned, agree and acknowledge that,  
18 one, we have read the foregoing settlement  
19 agreement."

20 MR. WILSON: And those are the first two lines of  
21 the page. I'm not going to read the rest of the page. And  
22 then the second page continues and ends the text, and the last  
23 line and a half of text on that page says, quote, "is  
24 accurately and properly reflected in the allocations set forth  
25 herein."

26 There then follows a page and a half of signatures.  
27 The first signature is of a person by the name of Nancy  
28 Gincalci, G-I-N-C-A-L-C-I, and the last signature -- I'm

1 sorry, Your Honor, I said it was three pages and -- I guess --  
2 that's correct, it is.

3 THE COURT: Okay. Last signature is who?

4 MR. WILSON: The last signature on the -- on the  
5 third page is illegible, but the last typewritten signature  
6 line, which is unsigned, says Robert Kilbourne,  
7 K-I-L-B-O-U-R-N-E. And Mr. Armstrong's signature appears  
8 approximately halfway through the third page, and dated 12-6-  
9 86. Is that an adequate description for your purposes?

10 THE COURT: I think it is, yes.

11 MR. WILSON: Thank you. Could we also --

12 THE COURT: All right. Go ahead with your  
13 submittals, defendants.

14 MR. GREENE: Before that, Your Honor, I just would  
15 like to get a couple of more declaration dates there where  
16 it's --

17 THE COURT: I don't find that's necessary. I think  
18 he has adequately described what he's talking about. Go right  
19 ahead with your --

20 MR. GREENE: May I have just a couple of moments to  
21 finish getting myself set up?

22 THE COURT: Yes.

23 (Pause)

24 MR. GREENE: Okay.

25 THE COURT: Go ahead.

26 MR. GREENE: Good morning. On behalf of Mr.  
27 Armstrong --

28 THE COURT: Just a second.

1 MR. GREENE: First --

2 THE COURT: Just a second.

3 MR. GREENE: Oh. Sorry.

4 (Pause)

5 THE COURT: Incidentally, during that submittal of  
6 evidence, counsel for amicus curiae Yanny showed up; he's  
7 seated at counsel table. Please go ahead, Mr. Greene.

8 MR. GREENE: Thank you. Number one --

9 (Interruption)

10 THE COURT: Go ahead.

11 MR. GREENE: First would be Exhibit A in support of  
12 Mr. Yanny's request for judicial notice of documents that is  
13 dated 5-11-92. Second -- and that Exhibit A is a document  
14 entitled "Gerry Armstrong Project" dated 17 February '82.

15 Next --

16 THE COURT: Nineteen what?

17 MR. GREENE: 1982.

18 THE COURT: Yes, sir. Go ahead.

19 MR. GREENE: Next, as Exhibit C in support of the  
20 same request for judicial notice is a document entitled  
21 "Plaintiff's Opposition to Defendant's Motion for Summary  
22 Judgment" in an action entitled Corydon, C-O-R-Y-D-O-N, versus  
23 Flynn, U.S. District Court, Central District of California,  
24 Case No. 90-3838.

25 Next is Exhibit D to the same request for judicial  
26 notice, which is an opinion by the 9th Circuit in Case No. 90-  
27 55288, the appeal of Aznaran versus Church of Scientology.

28 Next is Exhibit E -- and the date on the opinion is

1 July 11, '91. Next in order is Exhibit E to the same request  
2 for judicial notice in the Aznaran case in the trial court,  
3 Central District of California, U.S. District Court, No. CV-  
4 88-1786.

5 THE COURT: What is it?

6 MR. GREENE: Notice of motion and motion for  
7 preliminary injunction. Dated November 9, 1989.

8 THE COURT: Go ahead.

9 MR. GREENE: Next in order will be a series of  
10 exhibits that were submitted in support of the declaration of  
11 Graham E. Berry to all evidence in support of amended amicus  
12 curiae brief in opposition to plaintiff's order to show cause  
13 re preliminary injunction, and supporting exhibits in this  
14 case. Therein is Exhibit B --

15 MR. WILSON: Excuse me one second. Is that the  
16 declaration that is dated --

17 MR. GREENE: Oh, excuse me. Let me give you the --  
18 May -- that's the declaration May 7, 1992.

19 MR. WILSON: Thank you.

20 MR. GREENE: Exhibit B thereto is a six-page  
21 document that's entitled "Settlement Agreement."

22 C, which is our next in order, is an order  
23 dismissing action with prejudice --

24 THE COURT: Is that attached to the Berry document?

25 MR. GREENE: Yes, sir, this next series are --

26 THE COURT: All right. Go ahead.

27 MR. GREENE: -- encompassed by the Berry  
28 declaration. Order dismissing action with prejudice, filed in

1 this Superior Court No. C420153. Filed December 11, '86.

2 Next -- and for the sake of brevity, I'll refer to  
3 that case as Armstrong I, the prior case involving these  
4 parties in this court.

5 THE COURT: 421053 is the case number?

6 MR. GREENE: Yes, sir --

7 THE COURT: Go ahead.

8 MR. GREENE: -- and for the sake of brevity, that  
9 will be Armstrong I.

10 Then in Armstrong I, a minute order of 12-12, 1986.

11 Next in Armstrong I, a transcript of proceedings of  
12 December 11, 1986.

13 Next in Armstrong I, a memorandum of intended  
14 decision, with a file stamp of June 22, 1984, and Judge  
15 Breckenridge's signature indicating that it was on June 20th,  
16 1984, that he signed it. And that is Exhibit G to the Berry  
17 submission.

18 Next is Exhibit H, which is the Complaint in the  
19 Aznaran case in the Central District, filed April 1, 1988.

20 Next is "I" to the Berry declaration which is the  
21 Complaint in RTC versus Yanny, filed July 18, 1991, in this  
22 court.

23 Next is "J" to the Berry declaration, which is the  
24 First Amended Answer to Plaintiff's Verified Complaint, and  
25 that is in the RTC versus Yanny case.

26 Then, as Exhibit K to the Berry declaration, is a  
27 Reporter's Transcript of Proceedings in Armstrong I, dated  
28 December 23rd, 1991.



1 Judge, in going through these things, I'm not  
2 enumerating the other places in the record where they appear;  
3 there are -- some of these documents appear also in support of  
4 other motions that have been brought in other papers, but I'm  
5 submitting them here for our purposes before you today.

6 Exhibit L to the Berry declaration, which is a  
7 letter from Graham Berry dated March 13, 1992, to Laurie J.  
8 Bartilson.

9 THE COURT: Date of the letter?

10 MR. GREENE: March 13, 1992.

11 THE COURT: Go ahead.

12 MR. GREENE: Then, as Exhibit M to the Berry  
13 declaration, is a letter from Gerald Armstrong to Eric  
14 Lieberman, dated 8-21-91.

15 THE COURT: Dated?

16 MR. GREENE: August 21st, 1991.

17 THE COURT: And the writer is Berry?

18 MR. GREENE: No, sir; the writer is Armstrong, and  
19 the recipient is Lieberman, L-I-E-B-E-R-M-A-N.

20 THE COURT: Is that the same as the --

21 MR. GREENE: I think that it is. That counsel  
22 mentioned when he was enumerating his listing. I believe it's  
23 the same.

24 THE COURT: Yes. That's the same as the eighth item  
25 that counsel proffered -- just a second -- letter from  
26 Armstrong dated August 21, 1991, to Lieberman, Exhibit 2-B in  
27 evidence in support of preliminary injunction --

28 MR. GREENE: I haven't looked --

1 THE COURT: -- and it's Berry declaration Exhibit M;  
2 is it not?

3 MR. GREENE: I believe it is.

4 THE COURT: All right. So there's in essence a  
5 stipulation that that may be received.

6 MR. GREENE: Right.

7 THE COURT: All right. Go ahead.

8 MR. GREENE: Then back to the Berry declaration,  
9 Exhibit N thereto, Reporter's Transcript of Proceedings in  
10 this case when it was still in Marin County, wherein it had  
11 the case number 152229, and the proceedings were held on March  
12 3rd, 1992.

13 Exhibit O is a document in RTC versus Yanny,  
14 entitled "Defendant's Meet and Confer Statement" regarding  
15 defendant's noticed depositions of John J. Quinn, William T.  
16 Drescher and Laurie J. Bartilson, and the custodian of records  
17 of their respective law firms. That is dated February 20th,  
18 1992.

19 Next is Item P, which is a declaration of Gerald  
20 Armstrong in opposition to Scientology's motion for  
21 preliminary injunction, in this case when it still had the  
22 Marin County caption. And that declaration is dated March 16,  
23 '92.

24 Then, as Item Q, in RTC versus Yanny, deposition  
25 excerpts from the March 17, 1992 deposition of Gerald  
26 Armstrong.

27 Then next, as Exhibit R to the Berry declaration, in  
28 the RTC versus Yanny case, Armstrong deposition excerpts of

1 April 7th, 1992.

2 THE COURT: The deponent was whom?

3 MR. GREENE: I'm sorry, I didn't hear you.

4 THE COURT: Who was the deponent?

5 MR. GREENE: Gerald Armstrong again.

6 THE COURT: Go ahead.

7 MR. GREENE: Then, as Exhibit S to the Berry  
8 declaration, a document entitled "On Control and Lying" --

9 THE COURT: On control and what?

10 MR. GREENE: Lying.

11 And then as Exhibit T to the Berry declaration, a  
12 document entitled "Suppressive Person Declare Gerry Armstrong"  
13 dated 18 February 1982.

14 Next is what's been designated -- may I have a  
15 second, Your Honor. I don't want to repeat myself.

16 Next is a document entitled Exhibit DD to the  
17 Declaration of Graham E. Berry, in support of amicus curiae  
18 brief of Joseph A. Yanny in opposition to plaintiff's order to  
19 show cause re preliminary injunction, with the Marin County  
20 caption on it, and Exhibit DD --

21 THE COURT: Date of the Berry declaration that  
22 you're referring to is what? Is it the same one you've been  
23 referring to so far, or a different one?

24 MR. GREENE: No, it isn't --

25 THE COURT: The date of it is what?

26 MR. GREENE: Okay, I've got it. If I may have just  
27 a second.

28 (Pause)

1 MR. GREENE: March 16th, 1992. And --

2 THE COURT: What is that Exhibit DD?

3 MR. GREENE: Okay, that's what I wanted. Just a  
4 second, Your Honor. It is a document filed in Armstrong I on  
5 October 3rd, 1991, that is entitled "Notice of Motion and  
6 Motion to Enforce Settlement Agreement colon -- or semicolon;  
7 For Liquidated Damages and to Enjoin Future Violations."

8 Then next is Exhibit CC to the March 16th, 1992  
9 Declaration of Graham Berry, which is a document entitled  
10 "Stipulation of Evidence" in the case United States versus  
11 Mary Sue Hubbard, U.S. District Court, District of Colombia,  
12 Criminal No. 78-401.

13 There are a series of authorities that are out-of-  
14 state authorities, Your Honor; I don't know -- I suppose I'll  
15 excerpt those for now and then address them later; we would be  
16 relying on those.

17 THE COURT: Yes, they're not part of the factual  
18 record, no. Go ahead.

19 MR. GREENE: Next is the Declaration of Ford Greene,  
20 on the subject of Wakefield versus Church of Scientology of  
21 California (11th Circuit 1991), submitted in opposition to  
22 order to show cause re preliminary injunction, filed March 19,  
23 1992, in this case, under the Marin County caption, and  
24 executed the same date.

25 THE COURT: You said the date of execution and  
26 filing was what?

27 MR. GREENE: March 19, 1992.

28 THE COURT: Okay, Mr. Greene. Anything else?

1 MR. GREENE: Yes, sir.

2 (Pause)

3 MR. GREENE: Further submissions pursuant to the  
4 Declaration of Graham Berry executed March 16th, 1992, include  
5 excerpts from, quote, "A Piece of Blue Sky," close quote, by  
6 John Attack (phonetic), Chapter 5, which is Exhibit F to the 3-  
7 16-92 Berry declaration.

8 Exhibit G to the 3 -- if I said 19, I misspoke; I  
9 meant 16. Exhibit G to the 3-16 Berry declaration, further  
10 excerpts, Chapter 2 from "A Piece of Blue Sky."

11 Exhibit I to the Berry 3-16-92 declaration, an  
12 article entitled "Scientologies, a War Against Judges" from  
13 the December 1980 issue of "American Lawyer."

14 Exhibit J to the 3-16-92 Berry declaration, which is  
15 a story from September 20, 1988, the "L.A. Times," entitled  
16 "Misconduct By Judge Alleged in Scientology Suit."

17 Next is Exhibit K to the 3-16-92 Berry declaration,  
18 Chapter 1 of "A Piece of Blue Sky."

19 Exhibit V to the 3-16-92 Berry declaration, which is  
20 a five-page document entitled "Project Quaker."

21 Exhibit W to the 3-16 Berry declaration is a  
22 document entitled "Penalties for Lower Conditions" dated 18  
23 October 1967.

24 Next is Exhibit X to the 3-26-92 Berry declaration,  
25 a document dated 7 October 1971, entitled "Re Books and  
26 Enpheta," E-N-P-H-E-T-A, written about Scientology by S.  
27 Pease.

28 Next is Exhibit Y to the 3-16-92 Berry declaration,

1 which is a letter to Michael dated 20 May 1975.

2 "Z" to the Berry declaration of 3-16-92, a document  
3 in the U.S.A. versus --

4 THE COURT: Let me have -- you had Exhibit Y, a  
5 letter to Michael, and then did you have another --

6 MR. GREENE: Yes.

7 THE COURT: -- you had another letter, and I think I  
8 did not note that properly. Let me hear what your submittal  
9 is on the thing that followed next after Exhibit Y to the  
10 declaration.

11 MR. GREENE: That's what we're on now. Exhibit Y  
12 was the letter to Michael; the exhibit preceding that was the  
13 exhibit entitled "Re Books and Enpheta."

14 THE COURT: Okay. Go ahead. Go -- go -- give --

15 MR. GREENE: Pick up where I was?

16 THE COURT: Give me whatever you are -- you're going  
17 to give after Exhibit Y, please.

18 MR. GREENE: Yes, sir. Exhibit Z, a document  
19 entitled "Sentencing Memorandum of the United States of  
20 America," in the case captioned U.S.A. versus Jane Kember,  
21 K-E-M-B-E-R, U.S. District Court, District of Colombia,  
22 Criminal No. 78-401.

23 MS. BARTILSON: What's the date on that?

24 MR. WILSON: Excuse me, do you have a date on that?

25 MR. GREENE: Sure. The 20th of October, 1978.

26 And Exhibit AA to the 3-16-92 Berry declaration --

27 THE COURT: Just one second, please. After Exhibit  
28 Z, the next one was -- now you're going back to Exhibit AA?



1 MR. GREENE: Yes, sir.

2 THE COURT: Please identify that document.

3 MR. GREENE: That is a document dated 17 October  
4 '71, entitled "I.N.T.," new word, "Hatting: The Strike" --

5 THE COURT: How do you spell the word that comes  
6 after I.N.T.?

7 MR. GREENE: Double-T, -I-N-G. H-A-T-T-I-N-G.

8 THE COURT: I.N.T., new word, Hatting,  
9 H-A-T-T-I-N-G, right?

10 MR. GREENE: Yes, sir.

11 THE COURT: Okay.

12 MR. GREENE: Then Exhibit BB to the 3-16 Berry  
13 declaration, which is a document entitled "Declaration of  
14 Joseph A. Yanny," executed July 13, 1988.

15 Next is identified in the record under the caption  
16 in the -- of this case when it was in Marin County, entitled  
17 "Declarations of Gerald Armstrong," filed in support of amicus  
18 curiae brief of Joseph A. Yanny in opposition to plaintiff's  
19 order to show cause re preliminary injunction. The first  
20 Armstrong declaration is executed on March 19th, 1986.

21 THE COURT: The date was March 19, 1986, correct?

22 MR. GREENE: That is correct.

23 THE COURT: Go ahead.

24 MR. GREENE: The next declaration of Gerald  
25 Armstrong is dated November 1, 1986. Next -- and that is -- I  
26 apologize; that's identified as Exhibit B to the series of  
27 Armstrong declarations filed in support of the amicus.

28 Then submitted as Exhibit C is the Armstrong

1 declaration dated December 18, 1983.

2 Then the Armstrong declaration designated Exhibit D  
3 is that executed on November 7, 1986.

4 The next declaration is that designated as "E," in  
5 support of amicus, which has a date of November 18, 1986, on  
6 the front.

7 Then, as Exhibit F --

8 THE COURT: What is that, Exhibit E?

9 MR. GREENE: Exhibit E is an exhibit -- is a witness  
10 exhibit of -- unfortunately, the --

11 THE COURT: Just describe it.

12 MR. GREENE: The numbers that are on it says 24-90,  
13 and the month, the hole punch went through. And it's a  
14 plaintiff's exhibit -- that's the best I can identify it, and  
15 it's 14 pages long.

16 THE COURT: Go ahead.

17 MR. GREENE: Next is Armstrong declaration  
18 designated Exhibit F in support of amici dated March 15, 1990.

19 Next is Exhibit G to -- of Armstrong exhibits in  
20 support of amici, and that is Declaration by Gerald Armstrong  
21 dated September 3, 1991.

22 Then next is designated as H, Declaration of Gerald  
23 Armstrong dated May 7, 1985.

24 Next are declarations -- a document entitled  
25 "Declarations of Michael J. Flynn, Esq.," filed in support of  
26 amicus curiae brief of Joseph A. Yanny in opposition to  
27 plaintiff's order to show cause re preliminary injunction.  
28 And that's with the Marin County caption.

1 Exhibit A is a document entitled Affidavit of  
2 Michael J. Flynn, filed in Armstrong I. There is no date on  
3 that. Actually -- hold on. Excuse me, Your Honor. I may  
4 have misspoken.

5 I did misspeak. That's dated September 21st, 1983.

6 Then Exhibit B of the Flynn declarations in support  
7 of amicus curiae is a document entitled "Declaration of  
8 Michael J. Flynn" dated November 7, 1984.

9 And then Exhibit C is the -- is a document entitled  
10 "Declaration of Michael J. Flynn" of July 19th, '85.

11 Next are items that were submitted under a paper in  
12 this case, with the Marin County caption, filed March 16,  
13 1992, and the document's entitled "Evidence in Support of  
14 Defendant's Opposition to Scientology's Motion for Preliminary  
15 Injunction." And that is a Volume I, and Volume I is  
16 comprised of items concerning which -- that are the subject of  
17 a request for judicial notice.

18 Next in order --

19 THE COURT: What's the date of filing?

20 MR. GREENE: The date of filing was March 16th,  
21 1992.

22 THE COURT: How many more documents are you going to  
23 proffer?

24 MR. GREENE: There are about 30.

25 THE COURT: Thirty more documents?

26 MR. GREENE: Yes, sir.

27 THE COURT: We'll be in recess now. I order you all  
28 back here at 20 minutes after 11:00, ready to proceed. Be

1 seated in your places at that time.

2 MR. GREENE: Yes, sir.

3 (The Court recessed at 11:05 a.m., until 11:20 a.m.)

4 (The Court is called to order.)

5 THE COURT: All right. Be seated. You can go right  
6 ahead, Counsel, from where you left off. The attorneys who  
7 were before the Court before the midmorning recess are before  
8 the Court again. We're ready to go.

9 MR. WILSON: Excuse me, Your Honor, just so that  
10 we're all clear: Are we on No. 47 now?

11 THE COURT: No; I have us on No. 50.

12 MR. WILSON: My co-counsel says 49; well, I guess  
13 we'll --

14 (Laughter)

15 MR. WILSON: -- just keep going, and I say "next."

16 THE COURT: Well, it depends on what you mean -- it  
17 depends about on what you mean by "on." We just finished with  
18 something called the evidence in support of defendant's  
19 opposition to Scientology's motion for preliminary injunction,  
20 filed March 16, 1992, and it was at that point that I asked  
21 how much more material there would be, and counsel gave me the  
22 answer, and I suppose technically speaking we haven't  
23 concluded that item, but that would be No. 49.

24 MR. WILSON: Then, we're all in the same place.

25 MR. GREENE: Okay. Under that item, next is what's  
26 identified as Roman numeral I-A, which is a document entitled  
27 "Declaration of Vickie J. Aznaran," A-Z-N-A-R-A-N, supporting  
28 opposition to motion to disqualify plaintiff's counsel. And

1 that is dated August 9th, 1988, in the Aznaran case in the  
2 Central District.

3 Item Roman I-B is the Complaint in Armstrong I.  
4 That was filed on or about August 2nd, 1982.

5 Next is what's identified as Roman numeral I-D,  
6 which is a document in Armstrong I entitled "Application for  
7 an Order to Show Cause re Preliminary Injunction and Temporary  
8 Restraining Order," attached declarations and exhibits.  
9 Exhibit 1 thereto is an affidavit of Gerry Armstrong in the  
10 case entitled Van Schaick, V-A-N, new word, S-C-H-A-I-C-K,  
11 versus Church of Scientology, U.S. District Court for the  
12 District of Massachusetts No. 79-2491-G, executed July 22,  
13 1982.

14 And Exhibit 2 to the TRO application in Armstrong I  
15 is a document entitled "Affidavit of Gerry Armstrong" filed in  
16 the case entitled Burden, B-U-R-D-E-N, versus Church of  
17 Scientology, U.S. District Court, Middle District of Florida,  
18 Tampa Division, Case No. 8501-CIV-T-X, dated June 25th, 1982.

19 Next is item Roman numeral I-E; it's identified as  
20 the Armstrong evidence submitted in Marin March 16, 1992,  
21 Cross-Complaint in Armstrong I.

22 So that the record's clear, I may have skipped  
23 something, Your Honor. There is in this submission a request  
24 for judicial notice, and I don't want to be submitting these  
25 items without having included what it is under which they are  
26 submitted, and that's designated as Roman numeral I in the  
27 evidence submitted on 3-16-92 in Marin.

28 I-E is the Cross-Complaint for damages in Armstrong

1 I, filed April 17, 1982.

2           Next is item Roman numeral 1-F, which is the Third  
3 Amended Cross-Complaint for damages in Armstrong I, filed July  
4 1st, 1983.

5           THE COURT: What was the date of filing?

6           MR. GREENE: July 1st, 1983.

7           THE COURT: Please go ahead.

8           MR. GREENE: Next is identified as item Roman  
9 numeral I-H, which is the Notice of Entry of Judgment in  
10 Armstrong I, dated August 14, 1984.

11           Next is item --

12           MR. WILSON: Excuse me a second.

13           MR. GREENE: Yes.

14           MR. WILSON: Was that "H" Notice of Entry of  
15 Judgment filed August 10, '84?

16           MR. GREENE: That's what I -- that's what it says on  
17 the -- on the -- on the enumeration on the index.

18           THE COURT: Fine; let's move forward, then.

19           MR. WILSON: Thank you. I'm sorry.

20           THE COURT: I just want to tell you that to the  
21 extent that you occupy time in the document submittal, I'm  
22 naturally going to circumscribe the time that's devoted to  
23 your oral argument; I'll simply rule on the basis of the  
24 documents submitted to me. I don't believe I'm going to need  
25 to hear extensive oral argument. But go right ahead; I'm  
26 going to compress this thing up just a little bit.

27           MR. GREENE: Roman numeral I-i is the notice of  
28 appeal in Armstrong I, filed August 23, 1984.



1                   Next is item Roman numeral I-K, which is the joint  
2 stipulation of dismissal in Armstrong I, filed December 11,  
3 1986.

4           Next, identified as item Roman numeral I-L, a  
5 document entitled "Order Dismissing Action With Prejudice" in  
6 Armstrong I, filed December 11, 1986.

7           Next, item Roman numeral I-M, in Armstrong I, a  
8 document entitled "Stipulation for Return of Sealed Materials  
9 and Exhibits," filed December 11, 1986.

10                   Next, Roman I-N, document entitled "Order for Return  
11 of Exhibits and Sealed Documents" in Armstrong I, filed  
12 December 11, '86.

13 | Roman --

14 THE COURT: State the name of that document again.

15 MR. GREENE: Yes. That was "Order for Return of  
16 Exhibits and Sealed Documents."

17 Roman I-O, in Armstrong I, a document entitled  
18 "Stipulated Sealing Order," filed December 11, 1986. Just a  
19 moment, Your Honor; I'm sorry.

20 | (Pause)

21 MR. GREENE: Next, Your Honor, is a minute order in  
22 Armstrong I from December 11, 1986, and that's identified as  
23 Roman I-P.

24 Roman I-Q is a one-page document entitled  
25 "Stipulation" dated December 10, 1986.

26               Next is Roman I-R, a document entitled "Indemnity  
27 Agreement." It's two pages long, signed by Earl Coolie and  
28 Lawrence Heller.

1 Next is I-S, in Armstrong I, 12-12-86 minute order.

2 Next is identified as Roman I-U, which is an  
3 appellate -- a non- -- unpublished appellate opinion in  
4 Armstrong I that was filed December 18, 1990.

5 Next, in Armstrong I, in the Court of Appeal,  
6 identified as item Roman I-V, is a denial for petition for  
7 rehearing dated January 15, 1987.

8 Next, identified as Roman I-W, in the California  
9 Supreme Court, an order denying review filed March 11th, 1987.

10 Next, as Roman I-X, in Armstrong I, a document  
11 entitled "Unopposed Motion to Withdraw Memorandum of Intended  
12 Decision," filed January 30, 1987.

13 Next, Roman I-Y, a minute order in Armstrong I,  
14 dated February 2nd, 1987.

15 Next, as I-Z, a notice of appeal in Armstrong I,  
16 signed February 9, 1987, and I believe file-stamped the same  
17 date.

18 Exhibit I-AA is a denial of review, filed in the  
19 California Supreme Court on October 17, 1991, regarding  
20 Armstrong I.

21 THE COURT: Is that October 17th or December 17th?

22 MR. GREENE: There were two appeals, and so this is  
23 October 17, 1991, and that is Exhibit I-AA.

24 THE COURT: I understand. Go right ahead.

25 MR. GREENE: I-BB, in the Court of Appeal in  
26 Armstrong I is a remittitur notice of December 5th, 1991.

27 Next is Roman I-CC, which is a document entitled  
28 "Notice of Motion and Motion of Defendant Author Services,

1 Incorporated," to delay or prevent the taking of certain  
2 third-party depositions by plaintiff, memorandum of points and  
3 authorities, declarations of Lawrence E. Heller and Howard  
4 Schomer, S-C-H-O-M-E-R, in support thereof. And that's in the  
5 case captioned Corydun versus Church of Scientology, L.A.  
6 Superior Court No. C 694 401, dated October 1989 -- and I  
7 can't quite read -- I think October 31st.

8           Next is Roman numeral I-DD, a document entitled  
9 "Complaint for Damages and for Injunctive Relief," from, one,  
10 Fourth Amendment violations; two, First Amendment violations;  
11 three, due process violations under the Fifth Amendment; and  
12 fourth, equal protection violations under the Fifth Amendment,  
13 filed August 12, 1991, in the case Church of Scientology  
14 versus Xanthos, et al., X-A-N-T-H-O-S, U.S. District Court,  
15 Central District, No. 91-4301.

16           Next, identified as I-EE, is a document entitled  
17 "Supplemental Memorandum in Support of Defendant's Motion to  
18 Dismiss Complaint With Prejudice," declarations of Sam Brown--

19           THE COURT: Just a second. Supplemental memorandum  
20 in support of defendant's motion?

21           MR. GREENE: Yes, sir. To dismiss complaint with  
22 prejudice. Declarations of Sam Brown, Thorn Smith, Edward  
23 Austin, Lynn R. Farny, F-A-R-N-Y, and Laurie J. Bartilson,  
24 filed in Aznaran versus Scientology, on about August 28th,  
25 1981. I'm sorry. I misspoke. August 26, 1991.

26           Next is Roman I-GG in Armstrong I, a document  
27 entitled "Defendant and Cross-Complainant's Opposition to  
28 Notice of Motion and Motion to Enforce Settlement Agreement

1 for Liquidated Damages and to Enjoin Future Violations,"  
2 signed by Toby, T-O-B-Y, Plevin, P-L-E-V-I-N, November 18,  
3 1991. And that is in Armstrong I, if I didn't say so.

4 Roman I-HH, in Armstrong I, is a document entitled  
5 "Reply in Support of Motion to Enforce Settlement Agreement  
6 for Liquidated Damages and to Enjoin Future Violations," with  
7 a proof of service of November 22, 1991.

8 Roman numeral I-ii, in Armstrong I, a document  
9 entitled "Supplemental Opposition of Gerald Armstrong to  
10 Motion to Enforce Settlement Agreement," declaration of Toby  
11 L. Plevin, dated September 16, 1991.

12 Roman numeral I-JJ in Armstrong I is a document  
13 entitled "Supplemental Reply in Support of Motion to Enforce  
14 Settlement Agreement," declaration of Randall A. Spencer,  
15 dated December 19, 1991.

16 L --

17 THE COURT: Just a minute, please.

18 MR. GREENE: Yes, sir.

19 THE COURT: Please go ahead.

20 MR. GREENE: Roman numeral I-LL is Senate Bill No.  
21 711, amended January 27, 1992 --

22 THE COURT: Let me have the Senate bill number.

23 MR. GREENE: 711. 711.

24 THE COURT: Date of amendment?

25 MR. GREENE: January 27, 1992.

26 Roman numeral I-MM is in the Aznaran case, a  
27 document entitled "Amended Declaration" --

28 THE COURT: Just a second. Go ahead.

1 MR. GREENE: "Amended Declaration of Vickie J.  
2 Aznaran in Opposition to Plaintiff's Motion for Sanctions,"  
3 dated September 23rd, 1988.

4 Next, identified as Roman numeral II, pursuant to  
5 the evidence submitted in Marin on March 16, 1992, is a  
6 document entitled "Declaration of Gerald Armstrong in  
7 Opposition to Scientology's Motion for Preliminary  
8 Injunction."

9 Next is Roman numeral II-A, which is a document  
10 entitled "Attacks on Scientology," dated 25 February 1966.

11 Next is Roman numeral II-B, which is a document  
12 entitled "Level O Check Sheet," by L. Ron Hubbard.

13 Document II-C was also previously referenced as the  
14 penalties for lower conditions, dated 18 October 1967.

15 Document II-E is a four-page document that starts  
16 with the phrase, "after an initial 10 percent of the income  
17 has been deducted for research." And the page numbers on that  
18 document are 11, 12, 18 and 29.

19 Document Roman II-F is entitled "Affidavit of  
20 Kenneth David Long," sworn 5th October 1987, in a case  
21 captioned in the High Court of Justice, Chancery Division,  
22 1987 C No. 6140, Church of Scientology versus Russell Miller  
23 and Penguin Books, Ltd.

24 II-G --

25 THE COURT: Counsel, approximately 40 documents ago,  
26 I asked you how much more evidence you have, and you said 30  
27 documents.

28 MR. GREENE: I apologize.

1 THE COURT: Were you -- were you falsely stating  
2 something then, or what?

3 MR. GREENE: Well, in -- not intentionally, no, I  
4 wasn't; I was making --

5 THE COURT: Oh, is that a fact? Well, how many do  
6 you have now? Count them.

7 MR. GREENE: Give me a moment and let me count.

8 THE COURT: I certainly will, yes. I want you not  
9 to make a statement to me unless you know what you're talking  
10 about.

11 (Pause)

12 MR. GREENE: Ten.

13 THE COURT: Is there any reason that I shouldn't  
14 hold you to that?

15 MR. GREENE: No.

16 THE COURT: All right. Just a second. Please go  
17 ahead. You've just finished with No. II-F.

18 MR. GREENE: Correct. Next is II-G.

19 THE COURT: Right.

20 MR. GREENE: Same caption as the previous II-F,  
21 another affidavit of Kenneth David Long, also sworn October  
22 5th, 1987.

23 II-H, same caption, another affidavit of Kenneth  
24 David Long, also sworn October 5th, 1987.

25 Exhibit II-i, same caption. This document entitled  
26 "Affidavit of Sheila MacDonald," M-A-C, "Chaleff,"  
27 C-H-A-L-E-F-F.

28 MR. WILSON: C-H --?



1 MR. GREENE: -A-L-E-F-F. Sworn October 5th, 1987.

2 II-J is next, with the same caption as the prior  
3 ones, "Affidavit of Kenneth David Long," sworn 7th October  
4 1987.

5 Next, identified as Roman II-K, same caption, this  
6 simply entitled "Affidavit," sworn 8 October 1987, by Kenneth  
7 David Long.

8 Roman II-L is previously identified as the other  
9 settlement agreement that was six pages long.

10 II -- Roman numeral II-M is a one-page letter dated  
11 November 7, 1984, to Eugene M. Ingram, I-N-G-R-A-M, private  
12 investigator, from Phillip Rodriguez, R-O-D-R-I-G-U-E-Z,  
13 police officer.

14 Roman numeral II-N is a document dated April 23rd,  
15 1985, entitled "Public Announcement by Daryl F. Gates, Chief  
16 of Police, Los Angeles," with a certification date of May 16,  
17 1985.

18 Roman numeral II-O is a letter dated April 25th,  
19 1986, to Reverend Ken Podin and other individuals at the  
20 Church of Scientology from Robert N. Jorgenson, Office of the  
21 District of Attorney -- District Attorney, County of Los  
22 Angeles.

23 Finally, is the Request for Judicial Notice and  
24 Collateral Estoppel, filed in this court in this case on May  
25 7, 1992.

26 THE COURT: Defense objections to the plaintiff's  
27 proffers?

28 MR. GREENE: Your Honor, I don't know if it would

1 make it any easier for us to tell you to what exhibits of the  
2 plaintiffs we stipulate.

3 THE COURT: I don't either. Why do you make that  
4 point?

5 MR. GREENE: Well, because there's a couple -- one,  
6 if there are items to which we stipulate, we have submitted  
7 legal arguments that may truncate this proceeding if the Court  
8 pleases to address those first, and if not, we can go ahead.  
9 That is merely a suggestion.

10 THE COURT: I don't know what you're talking about.

11 MR. GREENE: What I'm talking about is --

12 THE COURT: I don't think that's entirely my fault.

13 MR. GREENE: -- one, the pending demurrer to which,  
14 when we were last before Your Honor we called to your  
15 attention and the argument submitted therein in Local Rule  
16 314.

17 THE COURT: Make your argument on that point.

18 MR. GREENE: Okay. On that point, what the  
19 plaintiffs are seeking here is an injunction compelling the  
20 specific performance of the settlement agreement at issue. In  
21 order for plaintiff to adequately see and make on its face the  
22 necessary showing to be entitled to that relief, the plaintiff  
23 has got to affirmatively allege that on its face, the  
24 agreement is fair, just, and reasonable to the defendant. The  
25 pleading required is different from that which is required  
26 from an ordinary breach of contract action. The reason for  
27 that, of course, is that an action for --

28 THE COURT: I understand the reason for it. Is that

1 the -- the totality of your point, that there's not an  
2 adequate allegation that the agreement is fair, just and  
3 reasonable?

4 MR. GREENE: And in support of that, the public  
5 policy arguments that --

6 THE COURT: Okay. Plaintiff?

7 MR. WILSON: Yes, Your Honor. First of all, I'm not  
8 going to bother the Court with going through the whole  
9 Complaint and showing the Court what has been alleged, but we  
10 have alleged very specifically the agreement. We've alleged  
11 the consideration that was paid. We've alleged the -- the --  
12 in fact, we've incorporated the agreement and we've alleged  
13 the breach is now to the extent that the Complaint is not --  
14 is deficient and does not support the relief because the magic  
15 language -- the conclusory magic language, I might add -- that  
16 the -- that the consideration wasn't fair, just and equitable,  
17 I would point the Court to a provision of the law in Discovery  
18 Manual which provides -- it talks about this matter of a  
19 demurrer being pending.

20 THE COURT: Don't make any further argument; I  
21 understand the points being made.

22 MR. WILSON: I want -- I want --

23 THE COURT: Stop. I understand the points being  
24 made on both sides; I understand that this is an objection to  
25 any further proceedings with respect to this application for  
26 provisional relief. The objection is overruled. Go forward  
27 on the merits; make your objections if you have any to the --  
28 pardon me -- to the evidence adduced by the other side.

1 Defendant?

2 MR. GREENE: I'm sorry, Your Honor, I didn't hear  
3 what you said.

4 THE COURT: Defendant's objections to plaintiff's  
5 proffers.

6 MR. GREENE: Okay.

7 (Pause)

8 MR. GREENE: There is no objection to the settlement  
9 agreement.

10 THE COURT: Do you have more objections, or do you  
11 have more stipulations? Counsel, I really expect you to move  
12 forward with this thing.

13 MR. GREENE: Sir.

14 THE COURT: Look: you get yourself organized,  
15 Counsel. The course of the proceedings must by now be  
16 perfectly obvious to you. One side has proffered some  
17 evidence; you've proffered some evidence. I'm going to get  
18 your objections to his evidence; I'll rule on them; I'll get  
19 his objections to your evidence; I'll rule on them, then I'll  
20 go ahead with the hearing.

21 If that was a mystery or a riddle, I've solved it  
22 for you. I don't think it was a mystery or a riddle; I think  
23 what's happening is that there is a deliberate effect --  
24 intention here to protract and to stall and to delay. I won't  
25 be a party to it. Be ready when you come back here at 1:30.  
26 I expect you to move forward with dispatch.

27 MR. GREENE: Yes, Your Honor.

28 THE COURT: The matter is recessed until 1:30. I

1 order the attorneys who are handling the matter to be back  
2 here. That of course excludes Mr. Berry who has managed to  
3 preserve his kind of bystander status. Be back here at 1:30  
4 ready to go forward.

5 The steps will be, defense objections to plaintiff's  
6 proffers, then plaintiff's objections to defendant's proffers,  
7 then I'll hear you on the merits if there is something to be  
8 heard. We'll finish the argument most likely today, without  
9 any serious difficulties. Thank you very much, Counsel.

10 (The Court recessed at 12:00 p.m., until 1:30 a.m.)

11 (Court is called to order)

12 THE COURT: Back on the record in Scientology  
13 against Armstrong. BC52395. The attorneys who were before  
14 the Court before the midafternoon recess are before the Court  
15 again. Go ahead with your objections to the plaintiff's  
16 submittal, please.

17 (Pause)

18 MR. GREENE: I have no objections to Item 2 on the  
19 Declaration of Lawrence Heller, January 1992.

20 As to the second Heller declaration of March 2nd,  
21 '92, we would object only to Exhibit B thereto, on the  
22 transcript of the video tape; I think the video tape is the  
23 best evidence.

24 Item 4 --

25 THE COURT: Counsel.

26 MR. WILSON: Your Honor, best evidence is not a  
27 proper objection. That best evidence has to do with when  
28 you're submitting a document and saying the original of the

1 document; the transcript is verified by Mr. Heller. It is, of  
2 course, primarily submitted for the convenience of the Court  
3 in the event the Court doesn't want to look at the video tape.

4 THE COURT: The objection is overruled. Go ahead,  
5 Counsel for the defendant.

6 MR. GREENE: No objection to Item No. 4.

7 Item No. 5, the transcript of the August 6, '91  
8 hearing in RTC versus Yanny, we don't have any objection to  
9 that and we simply request a reciprocal courtesy from counsel  
10 when it comes to transcripts that we are seeking to have  
11 before the Court. This transcript is not certified, but we  
12 don't have any problem --

13 THE COURT: Is there going to be any difficulty with  
14 that?

15 MR. WILSON: We will have no difficulty insofar as  
16 the cert -- as any certification or authentication type of  
17 objection; we may have some relevancy objection. I have to go  
18 look at my list of objections to tell you which ones we're  
19 objecting to right now, and I'll do that if you want, but --

20 THE COURT: Go ahead with your objections, Counsel  
21 for the defendant.

22 MR. GREENE: Shall I proceed, Your Honor?

23 THE COURT: Yes, you should.

24 (Pause)

25 MR. GREENE: We don't have any objections to any of  
26 the remaining items. There's one item about which I'm a  
27 little bit unclear, and that is, I don't think that the  
28 plaintiff has submitted a verified complaint in support of the



1 motion for preliminary injunction.

2 THE COURT: That's correct.

3 MR. GREENE: All right. Then I need not address  
4 that.

5 MR. WILSON: Your Honor.

6 THE COURT: Mm-hmm.

7 MR. WILSON: If I did not, it was an inadvertence.  
8 I must have, then, only admitted or offered the admission of  
9 Exhibit A, and I did mean to move the admission of the  
10 Complaint, and I apologize for that error. I was -- I had  
11 that on my list as No. 1, but I think what I did was I said  
12 Exhibit A, and then didn't -- which is the agreement.

13 THE COURT: That's right.

14 MR. WILSON: I apologize; that was an oversight. I  
15 meant to move the Complaint and Exhibit A.

16 THE COURT: Go ahead. Any more -- do you have any  
17 more alarm bells you want to ring, Counsel for defendant?

18 MR. GREENE: Yes. With respect to the verified  
19 Complaint, it's improperly verified. It's verified by  
20 counsel. We object on that basis, on the basis that the  
21 contents stated therein are hearsay; there is no foundation  
22 for those statements, and on those grounds, we'd object.

23 THE COURT: Plaintiff?

24 MR. WILSON: Your Honor, the Complaint was properly  
25 verified in that I am not -- my office is not in the same  
26 county as the plaintiff. Also, the --

27 THE COURT: He doesn't have any problem with  
28 verification as a pleading; his -- he recognizes that if he

1 were made to answer that on behalf of his client, he'd have to  
2 answer it by means other than a general denial. He'd have to  
3 make particularized allegations. His point is that to the  
4 extent that it's tendered as evidence, it's defective, because  
5 it doesn't contain any indication that the asserted  
6 evidentiary contents are competent.

7 MR. WILSON: Actually, Your Honor, that is a proper  
8 objection, but that isn't the one that he made.

9 THE COURT: It certainly is.

10 MR. WILSON: I think he said authentication and  
11 hearsay, which --

12 THE COURT: Hearsay is what it is.

13 MR. GREENE: Also, no foundation.

14 THE COURT: Anybody have anything more to say on it?

15 MR. WILSON: No, Your Honor.

16 THE COURT: The objection is sustained. Go ahead,  
17 Mr. Greene.

18 MR. GREENE: Your Honor, that's --

19 THE COURT: That concludes --

20 MR. GREENE: -- the sum and substance of our  
21 objections.

22 THE COURT: All of the other materials tendered by  
23 the -- by the plaintiff are received in evidence, subject only  
24 to the rulings heretofore made. Go ahead with -- go ahead  
25 with your client's objections to the defense proffers.

26 MR. WILSON: Yes, Your Honor. First of all, Item  
27 No. 1, Exhibit A in support of Mr. Yanny's request for  
28 judicial notice entitled "Jerry Armstrong Project," the

1 objection is lack of proper authentication, hearsay, and  
2 relevance.

3 THE COURT: Just a second.

4 (Pause)

5 THE COURT: Let me have -- let me have the  
6 foundational stuff regarding that, Ms. Cervantes, if I don't  
7 already have it here. It's the document entitled "Yanny's  
8 Request for Judicial Notice."

9 (Pause)

10 THE COURT: If one of you has an extra copy of it,  
11 give that to Ms. Cervantes so that we don't, pardon me, so  
12 that we don't spend time that we could be using for --

13 MR. WILSON: Your Honor, this is not an extra copy,  
14 but I have notes, and I can -- I think I can do it from my  
15 notes. And that --

16 THE COURT: All right. Keep your own papers, if you  
17 don't have an extra. Something called amicus curiae, it's a  
18 request for judicial notice.

19 MR. BERRY: Your Honor, I doubt if I'll be needing  
20 mine.

21 THE COURT: Why don't we use it.

22 No; this is your declaration, Mr. Berry. They're  
23 talking about the request for judicial notice.

24 MR. BERRY: Oh.

25 THE COURT: It looks a little like it, it's thick,  
26 yes.

27 MR. BERRY: Excuse the other --

28 THE COURT: That's all right. Plaintiff, your

1 objection was to Exhibit A --

2 MR. WILSON: Yes.

3 THE COURT: -- attached to the request?

4 MR. WILSON: Yes. Actually, Your Honor, I'd like to  
5 back up a second. I have a general objection to all of the  
6 documents submitted under cover of Mr. Berry's request for  
7 judicial notice and his declaration, on the basis that the  
8 case Yanny -- RTC versus Yanny, which is the basis for the  
9 intervention motion, has been dismissed, and therefore, no  
10 proper reason for Mr. Berry to be -- Mr. Berry's client to be  
11 an amicus. That would go to every document submitted under  
12 cover of Mr. Berry's -- either the request for judicial notice  
13 or his declarations.

14 THE COURT: Defendant?

15 MR. GREENE: Your Honor, we have, all the way  
16 through this litigation, incorporated the very able work of  
17 Mr. Yanny's lawyers in our opposition to the relief sought by  
18 plaintiff. And even if the Yanny case, as it was, was  
19 dismissed, it doesn't diminish our reliance on those documents  
20 as well. At the risk of speaking for Mr. Berry, who can't  
21 speak, it's my understanding that the Yanny II dismissal is  
22 going to be appealed and may be reversed, and so Yanny's  
23 interest in this case is not terminated by the fact of the  
24 dismissal.

25 THE COURT: That phase of your objection is  
26 overruled. Do you want to argue as to the second aspect of  
27 his objection to Item I-A?

28 MR. GREENE: I'm sorry. Let me ask you to repeat

1 that.

2 MR. WILSON: Yes, you may. Number one, it's  
3 unauthenticated; it's a request for judicial notice, and this  
4 is not something that can be judicially noticed. It's  
5 unauthenticated; lack of proper foundation; and also, it's  
6 irrelevant. Doesn't tend to prove anything at issue here.

7 MR. GREENE: With respect to lack of authentication,  
8 part of the record in Armstrong I, concerning which we have  
9 asked the Court to take judicial notice; two, with respect to  
10 its relevancy, it is relevant to Gerald Armstrong being the  
11 subject of the so-called fair-game policy which is irrelevant  
12 to whether or not Scientology comes to this courtroom with  
13 unclean hands in seeking the equitable relief it does.

14 THE COURT: Plaintiff?

15 MR. WILSON: Your Honor, it's a 1982 document, which  
16 is ten years ago, which is four years before the settlement  
17 agreement entered into here. Also it's -- it is not  
18 authenticated; merely saying it is part of the record doesn't  
19 authenticate the document. And in the request for judicial  
20 notice itself, it just says that the amicus request the Court  
21 to take judicial notice of the following documents.

22 THE COURT: The objection is sustained.

23 MR. GREENE: Thank you, Your Honor. Next, Item No.  
24 2, which is Exhibit C to that same declaration, on the basis  
25 of relevance. It's the opposition to a motion for summary  
26 judgment in a case called Corydon versus Michael Flynn, and  
27 has no tendency to prove any fact at issue here.

28 MR. GREENE: Our response to that is that the reason

1 it is relevant is because that particular document tends to  
2 establish what the major thrust of our defense is; that what  
3 Scientology seeks to enforce constitutes an obstruction of  
4 justice because it suppresses evidence and it makes it  
5 impossible for people who have been harmed by and in relation  
6 to the conduct of Scientology to gain any relief.

7 THE COURT: To achieve that function, would I have  
8 to believe the truth of the assertions contained in the  
9 declaration?

10 MR. GREENE: Yes, you would.

11 THE COURT: The objection is sustained.

12 MR. GREENE: Also, Your Honor --

13 THE COURT: Go ahead with your next objection.

14 MR. WILSON: Thank you, Your Honor. The next is  
15 Exhibit D to that request. It's the Aznaran versus CSI  
16 opinion, again on the basis of relevance. It has no tendency  
17 to prove any -- anything at issue here. Whatever happened  
18 between Ms. Aznaran and the Church of Scientology isn't  
19 relevant to what happened between the Church of Scientology  
20 and Mr. Armstrong after the settlement agreement was entered  
21 into in 1986.

22 THE COURT: Defendant?

23 MR. GREENE: Your Honor, it is relevant.  
24 Specifically what the relevance is that in this 9th Circuit  
25 opinion, it's on a writ from a denial of a very similar motion  
26 for preliminary injunction enforce -- seeking to enforce  
27 almost an identical settlement agreement. In the Aznaran  
28 case, and at Page 4 of the opinion, the Court in the 9th



1 Circuit specifically finds that the cause of the existence of  
2 a liquidated damages clause there is not able to be made the  
3 required showing of irreparable injury on it, and so it's --  
4 it's right on point and it is relevant.

5 THE COURT: Wait a minute. You're, then, asking me  
6 to take notice of the document because of its precedential  
7 effect, right?

8 MR. GREENE: Yes, that's correct.

9 THE COURT: Not its evidentiary effect, correct?

10 MR. GREENE: That's correct.

11 THE COURT: Deal with the footnote at the bottom of  
12 Page 1. It's footnote asterisk.

13 MR. GREENE: That particular rule applies to the  
14 federal courts, and I am not aware of any rule which would  
15 preclude this Court from making reference to the fact that on  
16 almost identical issues, a federal court made the ruling  
17 that's reflected here.

18 THE COURT: But what this means is that this opinion  
19 would not be binding precedent in the state court at all,  
20 correct? Because the federal court has absolutely no power to  
21 make a pronouncement which has binding precedential effect on  
22 a matter of non-federal law which would bind any state court,  
23 correct?

24 MR. GREENE: Auto-equity, yes, it could be  
25 persuasive, nonetheless.

26 THE COURT: All right, that's point 1. Point 2, the  
27 opinion is not even subject to being cited by the federal  
28 courts over whom the 9th Circuit -- or over which the 9th

1 Circuit has at least formal supremacy, correct?

2 MR. GREENE: That's correct.

3 THE COURT: The objection is sustained.

4 MR. GREENE: Let me add one thing, Your Honor: In  
5 terms of evidentiary value, what this is relevant to show is  
6 an effort made by the Scientology organization to suppress  
7 individuals who have first-hand knowledge of the misconduct  
8 engaged in by Scientology, from being able to disclose that,  
9 on two other people and two other litigants. And for that  
10 purpose, this has evidentiary value.

11 THE COURT: I believe that that's not a valid basis  
12 for offering it because that falls afoul of the provisions of  
13 Evidence Code 352. It would require me in essence to evaluate  
14 and try the issues involved in United States District Court  
15 CV-88-1786-JMI, which was apparently the subject of the  
16 memorandum unpublished and unpublishable opinion in United  
17 States Court of Appeals for the 9th Circuit No. 90-55288, and  
18 that would violate both of the precepts involved in CCP -- in  
19 Evidence Code 352, and I exclude this from consideration for  
20 that reason. Go ahead.

21 MR. WILSON: Thank you. The next objection is to  
22 Exhibit E in the request for judicial notice which is a motion  
23 for preliminary injunction in the Aznaran case, and the basis  
24 for that objection is relevance. Again, it tends to prove  
25 nothing of value in this case. The arguments about duress,  
26 fair game, et cetera, are not proven by what or what may not  
27 have happened with respect to the Aznarans in the church.

28 THE COURT: Why?

1 MR. WILSON: Because the Aznarans are not Mr.  
2 Armstrong, and the time period is not the time period that  
3 we're talking about here.

4 THE COURT: Well, this is a motion for preliminary  
5 injunction, correct?

6 MR. WILSON: It's our motion.

7 I'm sorry. That objection will be withdrawn. I  
8 apologize.

9 THE COURT: All right. The objection to Item 4 is  
10 withdrawn. That will be received. Go ahead.

11 MR. WILSON: The next objection is to Item 9.

12 THE COURT: Item 9? All right.

13 MR. WILSON: Would you like me to specify the ones  
14 we're not objecting to?

15 THE COURT: No, that's all right. If you get down  
16 to one, I'll understand that you're not objecting to any  
17 ones --

18 MR. WILSON: Okay.

19 THE COURT: -- before that except the ones that I've  
20 already ruled on; is that correct?

21 MR. WILSON: Yes.

22 THE COURT: Okay.

23 MR. WILSON: And I'll say the number and what we're  
24 objecting to, and if we don't agree on --

25 THE COURT: Sure. If the numbers don't line up --

26 MR. WILSON: Right.

27 THE COURT: -- we'll be able to note it. Number 9  
28 on my notes is Armstrong I memorandum of intended decision

1 with file stamp June 22, 1984, by Judge Breckenridge, signed  
2 June 20, 1984.

3 MR. WILSON: That's correct.

4 THE COURT: Just one second.

5 We've finished up everything now in the request of  
6 the amicus for judicial notice, haven't we? That doesn't come  
7 back again.

8 MR. WILSON: I think that's right, Your Honor.

9 THE COURT: Okay. I'll just put that over here, and  
10 try to get to the next packet of materials. Just one second.

11 MR. WILSON: We are now into Mr. Berry's  
12 declaration.

13 (Pause)

14 THE COURT: This now is the memorandum of intended  
15 decision?

16 MR. WILSON: Yes.

17 THE COURT: File-stamped June 22, 1984, by Judge  
18 Breckenridge, signed June 20, 1984. Just one second. Go  
19 ahead.

20 MR. WILSON: The objection to that, Your Honor, is  
21 lack of authentication as to how Mr. Berry knew that that's  
22 what it was, and secondly, relevance. It's the decision in  
23 1984 which was two years before the settlement agreement was  
24 entered into.

25 THE COURT: Well, pardon me. Is the -- when you say  
26 authentication, is it your client's contention that this  
27 document is inauthentic and that I wouldn't find it if I were  
28 to look in file No. C420153?

1 MR. WILSON: No; you would find it.

2 THE COURT: What's your view as to the objection  
3 expressed, Counsel for the defendant?

4 MR. GREENE: On authentication?

5 THE COURT: Any point you want to argue. You heard  
6 the objection.

7 MR. GREENE: Well, as to authentication, it is  
8 authentic; it's also the subject of our request for judicial  
9 notice as to relevance. It's directly relevant, one, to what  
10 one of the purposes of the settlement agreement were, which  
11 was to eliminate this opinion.

12 It is directly relevant to the item of plaintiff's  
13 evidence -- I believe it's item No. 4 -- it shows the payment  
14 of the settlement amount. The Court will notice that the  
15 individuals for the Defendant Armstrong in Armstrong I,  
16 concerning whom Judge Breckenridge specifically credits as  
17 being believable and as being sympathetic witnesses are the  
18 same individuals who were settled with and subject to the  
19 types of agreements -- or the type of agreement that is -- the  
20 plaintiff is seeking to enforce against Armstrong.

21 THE COURT: What point are you trying to make?

22 MR. GREENE: That it's directly relevant to  
23 Scientology's motivation to obstruct justice, and it's also  
24 relevant to whether or not Scientology comes into this court  
25 with clean hands, and it's also relevant to what the purpose  
26 of the settlement agreement was.

27 As the Court -- the settlement dealt with a number  
28 of different aspects. One of the aspects in -- I'm sorry to

1 argue, and it's -- I -- I don't want to argue and take up the  
2 Court's time; all I can say to you --

3 THE COURT: No; I can help you. The objection is  
4 overruled. I'm overruling it on the narrowest basis; I just  
5 think that it's relevant to the issues presented in this  
6 action because it presents a foundation and background  
7 concerning the circumstances leading to the making of the  
8 agreement which is at issue in this proceeding before me.

9 The other points that you made, I'm not commenting  
10 on one way or the other. It doesn't seem to me that it's  
11 necessary to deal with it at all now.

12 MR. GREENE: Yes, sir.

13 THE COURT: Go ahead, Counsel for plaintiff.

14 MR. WILSON: Thank you, Your Honor. Item 10 is  
15 Exhibit H, the Aznaran Complaint. We object on the basis of  
16 relevance, and also that -- if we need to get into it, we can,  
17 but we'd have to go through it paragraph by paragraph because  
18 it contains hearsay conclusions that are also inadmissible.

19 THE COURT: Let's see whether that's going to be a  
20 problem or not. Counsel for defendant, what's your theory  
21 concerning the Aznaran Complaint?

22 MR. GREENE: It's relevant, Your Honor, one, to what  
23 Scientology was seeking in its motion for an injunction in  
24 that case to silence the Aznarans from being free to express.  
25 And so that goes to the larger issue of whether what  
26 Scientology seeks to prevent Armstrong from expressing is part  
27 of a larger pattern, all of which goes to the issue of whether  
28 or not the agreement violates public policy if it's an



1 obstruction of justice.

2 THE COURT: How does the allegations made by  
3 Aznarans in their Complaint show anything along the lines that  
4 you were talking about?

5 MR. GREENE: I'm sorry, Judge; I had two people  
6 talking and I didn't hear you.

7 THE COURT: How does anything alleged by the  
8 Aznarans in their Complaint show anything along the lines that  
9 you were talking about?

10 MR. GREENE: What is alleged in the Aznaran  
11 Complaint, for example, is Scientology's practice of fair  
12 game. What that practice was as it applied to the Aznarans,  
13 what specific acts Scientology took with respect to the  
14 Aznarans.

15 THE COURT: So I'd have to believe the contents of  
16 the Aznarans' Complaint, right, for it to have the effect that  
17 you're talking about?

18 MR. GREENE: No. You don't have to believe that.  
19 But --

20 THE COURT: You mean it would be pertinent for me to  
21 know what somebody in 1988 alleged?

22 MR. GREENE: Yes, it would be.

23 THE COURT: The objection is sustained.

24 MR. WILSON: Thank you, Your Honor. Next is Exhibit  
25 I, which is the Yanny Complaint, and the objection is the  
26 same, as to relevance, and again, if we get --

27 THE COURT: You call it the Yanny Complaint; I  
28 understand it as the Complaint by your client --

1 MR. WILSON: I'm sorry.

2 THE COURT: -- and others against Mr. Yanny. Is  
3 that an accurate statement or description of what it is?

4 MR. WILSON: Your statement is accurate; my  
5 shorthand note is Yanny Complaint; that's how we refer to it.  
6 I apologize.

7 THE COURT: Okay.

8 MR. WILSON: It's Religious Technology Center versus  
9 Joseph Yanny, and it is Item 11 of the evidence proffered by  
10 Mr. Greene, Exhibit --

11 THE COURT: What's your client's basis for objecting  
12 to it?

13 MR. WILSON: It's not relevant.

14 THE COURT: Mr. Greene?

15 MR. GREENE: Our position is that it provides  
16 background material that's relevant to what Scientology claims  
17 Armstrong to have done specifically to assist Mr. Yanny in his  
18 litigation against Scientology.

19 THE COURT: The objection is overruled.

20 MR. WILSON: The next objection is to Exhibit J,  
21 which is the answer to the RTC versus Yanny Complaint, on the  
22 basis of -- I won't make the relevance objection because I  
23 heard what you said before. But it is -- does contain hearsay  
24 statements, conclusions, and it really -- it really isn't  
25 relevant.

26 THE COURT: Why should I -- how can I receive your  
27 client's Complaint without receiving Yanny's answer?

28 MR. WILSON: I take your point, Your Honor.

1 THE COURT: Well, is it a good point or a bad point?

2 MR. WILSON: It's a good point.

3 THE COURT: Well, I'll tell you what I'm going to  
4 do: I'm going to overrule your objection, but I'm going to do  
5 it on the following premise: that I do not accept the truth  
6 of any matter stated in the Yanny answer, but I'm using it  
7 simply to put the issues involved in Case BC033035 into focus.  
8 Please go ahead.

9 MR. WILSON: Thank you. The next objection is as to  
10 Item 14, Exhibit L to the Berry declaration.

11 THE COURT: Item 14, just a second. What we were  
12 just working with was Item I, right?

13 MR. WILSON: Right. No, J --

14 THE COURT: No; it's Item J, I mean.

15 MR. WILSON: Right.

16 THE COURT: No; it's item No. 12.

17 MR. WILSON: Correct.

18 THE COURT: And now we're on No. 14?

19 MR. WILSON: Right.

20 THE COURT: Just a second. Your client's objection?

21 MR. WILSON: The objection is that it's not  
22 relevant. It's Mr. Berry's letter to Ms. Bartilson in which  
23 he requests that she not try to seek a TRO in this case.

24 THE COURT: Counsel for defendant? Well, actually,  
25 it's two things: it's two letters from Berry, one dated March  
26 13 and one dated February 28, both 1992?

27 MR. WILSON: Yes, Your Honor, I --

28 THE COURT: Let me just see. He only wanted the

1 March 13th letter. Okay. Mr. Greene?

2 MR. GREENE: Our position is that it's relevant to  
3 the obstruction of justice in the effort by Scientology to  
4 silence knowledgeable individuals about its activities from  
5 providing any kind of assistance to other litigants.

6 THE COURT: The objection is sustained.

7 MR. GREENE: Your Honor, before we move just a step  
8 further, I would ask if you would reconsider your ruling as to  
9 the Aznaran Complaint and rule on it in the way that you did  
10 as to the Yanny II Complaint.

11 THE COURT: My ruling stands as to that. Thank you.  
12 Go ahead with your next objection, if any, Counsel.

13 MR. WILSON: Thank you, Your Honor. The next is  
14 Item 17 --

15 THE COURT: Yes.

16 MR. WILSON: -- which is Exhibit O, which is a meet  
17 and confer statement of 20 February 1992. It's in the Yanny  
18 case, and the basis for that objection again is relevance.

19 THE COURT: Counsel for plaintiff -- or for  
20 defendant?

21 MR. GREENE: It explains the background of the Yanny  
22 case and is relevant to the interaction between Yanny and  
23 Armstrong.

24 THE COURT: The objection is sustained in the --  
25 objection is sustained on the grounds of relevancy; I'm  
26 relying on the classical standard of relevancy and on Evidence  
27 Code 352, and I do so in connection with this document as  
28 well. Go ahead.

1 MR. WILSON: The next objection is to Item 17 which  
2 is Mr. Armstrong's declaration that's Exhibit P --

3 THE COURT: That was Item 17, I believe, Counsel --

4 MR. WILSON: I'm sorry, Your Honor; 18.

5 THE COURT: Yes, sir. Exhibit P, Declaration of  
6 Armstrong --

7 MR. WILSON: And it als --

8 THE COURT: Just one second, please. I have the  
9 Declaration of Armstrong.

10 MR. WILSON: Okay. I had made my notes on another  
11 volume where it appears, so if you'll just give me a minute to  
12 get it.

13 THE COURT: No problem; of course.

14 MR. WILSON: And I'm afraid I'm going to have to go  
15 through this one paragraph by paragraph, because of course it  
16 is in this case. And on Page 3 --

17 THE COURT: Yes, sir.

18 MR. WILSON: -- Paragraph 5: "Through my research  
19 and study of documentary evidence, I was compelled to conclude  
20 that Mr. Hubbard had lied," et cetera, et cetera. That's  
21 opinion.

22 THE COURT: That sentence?

23 MR. WILSON: That sentence, yes.

24 THE COURT: Counsel for defendant?

25 MR. GREENE: One, it's supported in terms of  
26 foundation by the decision of Judge Breckenridge in his  
27 memorandum of intended decision. Two, it goes to the issue of  
28 why it is that Scientology wants to enforce this agreement



1 against Mr. Armstrong so as to be able to, one, gain an unfair  
2 edge in any judicial proceedings that it's involved in, and  
3 two, be able to disseminate information about Hubbard without  
4 any -- in public forums -- without any contrary evidence  
5 coming in from knowledgeable persons. And it also goes to Mr.  
6 Armstrong's state of mind.

7 MR. WILSON: Excuse me, Your Honor, but whether  
8 something goes to his state of mind doesn't meet an objection  
9 on the basis of opinion, and none of Mr. Greene's comments met  
10 the objection as to the one that we made, which was that it's  
11 opinion.

12 THE COURT: How about Section 800, evidence code?  
13 Is the opinion objection overcome by that?

14 MR. WILSON: I'd have to look at that particular  
15 section again, Your Honor.

16 THE COURT: Sure.

17 MR. WILSON: And I apologize for not having it in  
18 front of me.

19 THE COURT: Okay. Here's how it reads:

20 READING:

21 "If a witness is not testifying as an expert, his  
22 testimony in the form of an opinion is limited to  
23 such opinion as rendered by law, including but not  
24 limited to an opinion that is rationally based on  
25 the perception of the witness and helpful to a clear  
26 understanding of his testimony."

27 I've left the subsection designations out.

28 MR. WILSON: That's fine. I understand your point.



1 I think that it -- while it may be rationally based, you can't  
2 tell from reading this that it is; he just says he -- through  
3 his research and study he was compelled to conclude that he  
4 had lied, and then he lists generalities about past,  
5 credentials, accomplishments, relationships and intentions.  
6 It's so general that it doesn't really help a rational  
7 understanding of what -- what he's saying.

8 THE COURT: The objection is sustained. That is as  
9 to Page 3, Line 25, to Page 3, Line 27, that single sentence.  
10 Go ahead, please.

11 MR. WILSON: And the next sentence, the objection is  
12 it's also opinion and it's also hearsay. And it's hearsay in  
13 that he -- I obtained evidence which disproved many of the  
14 claims. For example, "evidence" is a term of art when we use  
15 it and when Your Honor uses it; we don't know what it means  
16 when Mr. Armstrong uses it. And again, it's -- it's hearsay  
17 as well because we don't know what he's -- what -- who told  
18 him what, and what the evidence was.

19 THE COURT: I'm going to make the opposite ruling in  
20 connection with this sentence. This, I think, is simply his  
21 effort to describe what he thinks he observed as to the  
22 content of this material. I will permit that. It's like the  
23 opinion that somebody is drunk; it's, technically speaking,  
24 potentially an opinion -- pardon me -- but it is in our common  
25 understanding and it's the kind of thing that people are  
26 permitted to give shorthand statements about. Go ahead,  
27 please.

28 MR. WILSON: Thank you. The next objection begins

1 on Line 8 of the next page and goes through Line 22, and it  
2 starts with the phrase:

3 READING:

4 "I had by this time obtained evidence which  
5 disproved the significant representations Hubbard  
6 had made about himself or his technology which had  
7 drawn me into and kept me in the organization."

8 THE COURT: Yes. I understand. I'll leave that in.  
9 I recognize that this is his view of it; he doesn't state what  
10 it is. He's just talking about what he thinks some  
11 information does; it's not highly persuasive, but he's trying  
12 to describe what he thinks is his -- is the result of a search  
13 for information. That objection is overruled.

14 MR. WILSON: I was also going to say that it's  
15 hearsay as to what Mr. Hubbard said -- that he was an  
16 engineer, that he did this and this and this. The next  
17 objection --

18 THE COURT: Is Hubbard a person -- is Hubbard a  
19 person who was affiliated with your client?

20 MR. WILSON: He was the founder.

21 THE COURT: Would that be a -- an admission which  
22 would be imputed to your client?

23 MR. WILSON: I don't think so, because I don't think  
24 that any of these things, number one, comes up to being an  
25 admission; and number two --

26 THE COURT: Wait, it's --

27 MR. WILSON: -- are relevant.

28 THE COURT: -- it's got to be an admission if it's a

1 statement made by somebody who has -- pardon me -- an  
2 appropriate relationship with an adverse party.

3 MR. WILSON: Your Honor, he was not in -- he's not a  
4 member of the corporation. He was a founder of the  
5 predecessor. But none of these things are -- would be  
6 admissions even if he were. Because they're not -- adverse.

7 THE COURT: No; I'm not talking about -- I'm talking  
8 about an admission; I'm not talking about a declaration  
9 against interests.

10 MR. WILSON: I still don't see that they would be  
11 admissions.

12 THE COURT: Why not?

13 MR. WILSON: It's my understanding of "admission,"  
14 it has to be admission of a fact to be used against the party  
15 that's supposedly admitting it; not that it's simply  
16 establishing a fact.

17 THE COURT: Okay. Then we have a --

18 MR. WILSON: I may be wrong on that, but that's what  
19 I think it is.

20 THE COURT: -- we have a conceptual difficulty,  
21 then, which we ought to be able to address by reference to the  
22 law. Just a second.

23 (Pause)

24 THE COURT: I'm talking about admissions as  
25 discussed in Evidence Code, Sections 1220 to 1228, evidence of  
26 a -- this is 1220:

27 READING:

28 "Evidence of a statement is not made inadmissible by

1 the hearsay rule when offered against the declarant  
2 in an action to which he is a party in either his  
3 individual or representative capacity, regardless of  
4 whether the statement was made in his individual or  
5 representative capacity."

6 THE COURT: See, that doesn't have anything to do  
7 with the content of the statement; it has to do with the  
8 identity of the person making the statement, and it has to do  
9 with the relationship between the person making the statement  
10 and the party against whom it's offered.

11 MR. WILSON: Your Honor, Mr. Hubbard's not a party,  
12 and Mr. Hubbard died in 1986, and -- the plaintiff was formed  
13 -- the plaintiff was formed prior to that time, but he has no  
14 involvement with them; he's been dead for six years.

15 THE COURT: No; I'll permit the material,  
16 nevertheless.

17 MR. WILSON: Thank you, Your Honor. Moving to  
18 Paragraph 6: "Following my departure, the organization  
19 published a declaration dated February 18, labeling me," et  
20 cetera. The objection to that is to lack of knowledge,  
21 foundation. If he -- if it was after he departed, we don't  
22 know how he knew and he doesn't say in his declaration how he  
23 knew.

24 THE COURT: Counsel for defendant?

25 MR. GREENE: This -- the declaration was part of and  
26 attached to exhibit as an exhibit to Armstrong's Cross-  
27 Complaint in Armstrong I. And that being the case --

28 THE COURT: What are you talking -- what are you

1 talking about? This is a declaration that was in the case --  
2 in Marin County Case 152229.

3 MR. GREENE: Right.

4 THE COURT: And it was for a hearing of March 20th,  
5 1992.

6 MR. GREENE: And reference is made in Paragraph 6 to  
7 a declaration dated February 18, 1982.

8 THE COURT: Yes.

9 MR. GREENE: That labeled Armstrong a suppressive  
10 person, which subjected him to the fair game policy. And  
11 counsel's objection is that Arms -- that Armstrong didn't have  
12 any -- any knowledge of this. Arms --

13 THE COURT: Not that he didn't have knowledge of it,  
14 but it doesn't show as knowledge. He's making an objection  
15 based on foundation.

16 MR. GREENE: The document is attached to Armstrong's  
17 Complaint, which has been submitted to the Court.

18 THE COURT: Where?

19 MR. GREENE: Just a second, I will tell you. This  
20 was -- in Armstrong's evidence -- Roman numeral I-F --

21 THE COURT: Which -- which of your exhibits?

22 MR. GREENE: That's what I'm -- the one that we  
23 identified as --

24 THE COURT: I-F?

25 MR. GREENE: -- I-F, which is the Third Amended  
26 Complaint in Armstrong I.

27 THE COURT: So that's Item 56. Mind supplying me  
28 with that?

1 MR. WILSON: We have an objection to that, which we  
2 could take up now, I suppose.

3 THE COURT: Let's do it.

4 (Pause)

5 MR. WILSON: I think my notes show that it's 55.

6 THE COURT: Well, mine show it as 56, but it doesn't  
7 make any difference. Mr. Greene didn't number it in his own  
8 notes.

9 MR. WILSON: I've got -- I know whom we're talking  
10 about.

11 MR. GREENE: It's -- Your Honor, it's also part --  
12 it's referred to in Judge Breckrenridge's decision on Page 5.

13 THE COURT: Let's see if we can deal with these  
14 things one by one.

15 MR. GREENE: I have the declare --

16 THE COURT: Fine. Give it to me now.

17 MR. GREENE: Yes, sir. May I --

18 THE COURT: Give it to Ms. Cervantes.

19 MR. WILSON: I'm prepared to make my objection any  
20 time.

21 THE COURT: Well, actually, exhib -- pardon me --  
22 Exhibit I-F -- pardon me -- is a Third Amended Cross-Complaint  
23 for damages; my notes reflect that it was a Third Amended  
24 Complaint, but does everybody agree that it's the Third  
25 Amended Cross-Complaint?

26 MR. GREENE: Yes.

27 THE COURT: Everyone?

28 MR. WILSON: That's how I see it.



1 THE COURT: All right. Go ahead. What is it --

2 MR. WILSON: The objection on that is --

3 THE COURT: -- you want to say about that?

4 MR. WILSON: -- very simply, it's an unverified  
5 complaint signed by counsel --

6 THE COURT: So that's not evidence, either --

7 MR. WILSON: Right.

8 THE COURT: -- at least as to the truth of the  
9 matters stated in it, right?

10 MR. WILSON: Right, and so that plus the exhibits  
11 should be strick -- strucken -- stricken. Excuse me.

12 THE COURT: Well, if -- it's not so much that it  
13 should be stricken; it's that it doesn't constitute  
14 evidentiary foundation for any other statement. That's your  
15 theory. We haven't -- he may be offering it for some purpose  
16 other than as a foundation for the exhibit we've been talking  
17 about, right?

18 MR. WILSON: I -- I don't know why he's offering it,  
19 except --

20 THE COURT: All right.

21 MR. WILSON: -- for that purpose.

22 THE COURT: Okay. Do you want to say anything more  
23 about either Exhibit I-F or I -- yes, I-F or --

24 MR. WILSON: The exhibit?

25 THE COURT: -- or this declaration, Mr. Greene?

26 MR. GREENE: Yes.

27 THE COURT: Go ahead.

28 MR. GREENE: It provides background information with

1 respect to the relationship between Armstrong and Scientology;  
2 it is referred to specifically at Line -- Lines 14 and 15 on  
3 Page 5 of Judge Breckenridge's decision and is part of the  
4 record in Armstrong I. There is sufficient authentication for  
5 it, and it's relevant.

6 THE COURT: Where does Judge Breckenridge refer to--  
7 I -- I would -- I reject all the asserted bases that you've  
8 talked about except the reference to the Breckenridge  
9 decision. Let me just see where you think it's referred to in  
10 the Breckenridge decision. Where is the --

11 MR. GREENE: Page 5.

12 THE COURT: Where is the Breckenridge decision?

13 (Pause)

14 MR. GREENE: That is Item G of Yanny's evidence.

15 THE COURT: I don't see that. You mean the request  
16 for judicial notice? Mr. Greene?

17 MR. GREENE: Yes, sir. I -- it is -- no. The  
18 declaration of Graham E. Berry to all evidence in support of  
19 amended amicus curiae brief, original filed May 8, '92 --

20 THE COURT: So it's not Yanny's request for judicial  
21 notice; it's the Berry declaration, right?

22 MR. GREENE: It's the Berry declaration which is on  
23 behalf of Yanny. I'm sorry.

24 THE COURT: And what page do you want to look at?

25 MR. GREENE: At Page 5.

26 THE COURT: I'm on that page. And what is it that  
27 you want to find out?

28 MR. GREENE: Directing the Court's attention to

1 Lines 14 and 15.

2 THE COURT: Just a second.

3 MR. GREENE: And the context would be 9 through 15.

4 THE COURT: The objection is sustained. That  
5 doesn't lay a foundation for it either.

6 MR. WILSON: Your Honor, so I may be clear, we  
7 were, we had now skipped and we were talking about this  
8 amended cross-complaint and the exhibit to it.

9 THE COURT: That's not what I was dealing with. I  
10 was dealing with the material on the -- in this declaration of  
11 this defendant --

12 MR. WILSON: Okay.

13 THE COURT: -- that you were -- that you were  
14 dealing with. If you want to express your objection as to  
15 Exhibit 56 now, that would be all right, I have --

16 MR. WILSON: Okay. I think --

17 THE COURT: -- no quarrel with that. Your objection  
18 is what?

19 MR. WILSON: The objection to that one is relevance,  
20 Your Honor. And it also --

21 THE COURT: To Exhibit 56, is relevance?

22 MR. WILSON: Sorry. Where are we?

23 THE COURT: Exhibit 56 is I-F to the Armstrong --

24 MR. WILSON: I'm sorry. I'm sorry. I misspoke.  
25 It's an unverified cross-complaint.

26 THE COURT: So?

27 MR. WILSON: Therefore, it can't be offered for the  
28 truth of any matter stated in it.

1 THE COURT: Plaintiff -- or defendant?

2 MR. GREENE: Offered for Mr. Armstrong's state of  
3 mind and to show the background of the relationship between  
4 the parties in this case.

5 THE COURT: The objection is sustained.

6 MR. WILSON: Thank you. Now, to move back into this  
7 declaration -- and I apologize if I take a minute here to make  
8 sure I'm in the right place -- I believe that the last  
9 objection that I made was as to the first sentence --

10 THE COURT: Let me ask you: did you and counsel for  
11 defendants get together to try to iron out any of your  
12 evidentiary objections?

13 MR. WILSON: Well, we had a very brief conversation  
14 where we basically agreed we weren't going to be able to  
15 agree. But I would not say we got through -- were able to go  
16 through it all, no.

17 THE COURT: Is there any reason that I shouldn't set  
18 down an order to show cause to determine why counsel had such  
19 a brief conversation, did not agree, and are now taking up the  
20 time of the public in ironing out these evidentiary points,  
21 and, if there is not good cause for it, sanctioning them  
22 monetarily, since they're taking time away from the  
23 preparation and hearing of other cases?

24 MR. WILSON: Your Honor, the only thing I can say is  
25 that we tried to keep our filing to a minimum, and had to meet  
26 all this -- all these things that were filed. And the way  
27 that we did it was first to file our evidentiary objections,  
28 then when we came into court here and heard how you wanted to

1 handle it, went through and made our very specific objections.

2 THE COURT: Was there any other way to handle it?

3 Was there any other way to handle it other than to have the  
4 factual record then hear legal argument?

5 MR. WILSON: There is no other way, as far as I can  
6 tell.

7 THE COURT: Mr. -- Greene and Mr. -- your last name  
8 is Wilson?

9 MR. WILSON: Wilson, Your Honor.

10 THE COURT: -- Mr. Wilson are ordered to appear  
11 before me and show cause why they should not be monetarily  
12 sanctioned pursuant to California Rules of Court 227 and  
13 California Code of Civil Procedure Section 128.5 at 8:30 on  
14 June 16, 1992, in this department; that's Department 88.

15 The elements that they should refer to are the  
16 evidentiary or purported evidentiary submittals in the case  
17 and the apparent failure of counsel to meet or confer or do  
18 anything with respect to trying to obviate some of the  
19 evidentiary difficulties associated with the various  
20 submittals.

21 And the failure of counsel appropriately to concern  
22 themselves with the obvious imposition on the public resource  
23 of the judiciary involved in sitting here and going through a  
24 whole series of objections as to this extensive evidentiary  
25 submittal, some items of which are manifestly inappropriate  
26 for receipt into evidence.

27 Just go ahead and comply with that order to show  
28 cause at the appropriate time. If you're going to submit any

1 papers, the papers are due on a simultaneous briefing basis,  
2 no later than five court days before the hearing set before  
3 me, with no more than seven pages of double-spaced text on  
4 each side.

5 Go ahead. Make your next objection or do what you  
6 next have to do, please, Mr. Wilson.

7 MR. WILSON: Your Honor, I'm afraid I'm going to  
8 have to continue with my objections because --

9 THE COURT: Go right ahead. You handle the case any  
10 way you think is appropriate to do so. I don't mean at all to  
11 inhibit your presentation of the case. My concern is the  
12 concern that was expressed in the order that I just made. Go  
13 ahead.

14 MR. WILSON: I understand, Your Honor. The balance  
15 of that paragraph also contains unsubstantiated and there's no  
16 foundation for the -- for the statements that are made; why SP  
17 is considered in Scientology a certain way; what the fair-game  
18 policy is; does SP declare/accuse Mr. Armstrong of all these  
19 heinous crimes.

20 THE COURT: This is the remainder of Paragraph No. 6  
21 in the --

22 MR. WILSON: That's right.

23 THE COURT: -- in the declaration of March 16, 1992,  
24 right?

25 MR. WILSON: Yes.

26 THE COURT: Just a second. And your -- the legal  
27 basis for your objection is what?

28 MR. WILSON: Lack of foundation, lack of -- lack of



1 showing of personal knowledge.

2 THE COURT: Just a second. The objection is  
3 overruled.

4 MR. WILSON: Thank you, Your Honor. Paragraph 7, he  
5 says that the -- the first sentence --

6 THE COURT: Page and line, please.

7 MR. WILSON: Fourteen, Page 5, Line 14 through 18.

8 THE COURT: Just a second. Grounds?

9 MR. WILSON: The grounds are the same as for the  
10 similar sentence that appeared on the previous page, that  
11 there is no showing of personal knowledge that the  
12 organization published a second SP declare.

13 THE COURT: Same ruling; that objection will be  
14 sustained as to the purported description of the contents of  
15 the second publication; overruled as to all other portions of  
16 that sentence. Go ahead.

17 MR. WILSON: Thank you. The next page, Paragraph 8,  
18 the sense of that paragraph is that the organization employed  
19 a number of private investigators, and then during that  
20 period, one of the investigators assaulted him. The  
21 organization also attempted to get the Los Angeles Police  
22 Department to bring criminal charges. No showing of personal  
23 knowledge as to how he knows that it was the organization that  
24 did these things.

25 THE COURT: Defendant?

26 MR. GREENE: One, Armstrong testifies to this on the  
27 basis of his own personal knowledge. Two, it's part of the  
28 findings that are made by Judge Breckenridge at the end of his

1 memorandum of intended decision --

2 THE COURT: Where is that?

3 MR. GREENE: Okay. We are looking first at the  
4 Berry declaration filed May 8 --

5 THE COURT: Right.

6 MR. GREENE: -- in this court --

7 THE COURT: Right.

8 MR. GREENE: Just a moment.

9 (Pause)

10 MR. GREENE: And we are looking at Pages 13 through  
11 15 of the appendix, which is at the very end of the decision.  
12 Particularly --

13 THE COURT: Just a second.

14 MR. GREENE: Yes, sir. I'm sorry.

15 THE COURT: Go ahead. Tell me the page and line  
16 numbers.

17 MR. GREENE: Fourteen, 22 -- Line 22 through 15,  
18 Line 10.

19 THE COURT: Fourteen, 22, to 15, 10? All right.  
20 Just a second. Counsel for plaintiff.

21 MR. WILSON: Your Honor, the fact that the  
22 Breckenridge decision incorporates it doesn't authenticate and  
23 show that -- I'm sorry -- it doesn't give the personal  
24 knowledge background required for this declaration.

25 THE COURT: Doesn't it constitute a judicial finding  
26 of fact?

27 MR. WILSON: Yes.

28 THE COURT: Wouldn't it be appropriate, then, for

1 the witness to say that, basing his statement without explicit  
2 attribution on a judicial finding of fact?

3 MR. WILSON: It might be, but he didn't do that.

4 THE COURT: Didn't he base his statement without  
5 attribution on a judicial finding of fact?

6 MR. WILSON: Without attribution, yes, he did.

7 THE COURT: Wouldn't it be appropriate for him to do  
8 that?

9 MR. WILSON: Well. I don't think that's what he  
10 did, because this state -- I don't -- I don't think that  
11 that's what he did, Your Honor. I -- I -- you just -- you  
12 just have a naked paragraph here that says what he thinks the  
13 organization did.

14 THE COURT: The Breckenridge decision is where; is  
15 it -- pardon me -- is it in evidence or not in evidence, Mr.  
16 Armstrong or Anderson?

17 MR. WILSON: I think it's in.

18 THE COURT: It is. So -- I'm sorry, Mr. Wilson. So  
19 that is there any sense in which this information is any --  
20 that's in the -- Armstrong declaration, anything other than  
21 just rehashing what Judge Breckenridge wrote?

22 MR. WILSON: Well, I think you could accurately  
23 characterize it that way, yes. And it would be cumulative.

24 THE COURT: Yes.

25 MR. WILSON: The problem that I'm facing, Your  
26 Honor, is that we -- you've seen how much was filed and relied  
27 on, and I'd like to have a clean record.

28 THE COURT: I don't blame you. Let me have the

1 citation to the material being objected to again.

2 MR. WILSON: It's the paragraph numbered 8 on Page  
3 6, which would be Line 3 to 12.

4 (Pause)

5 THE COURT: Is it your theory, Mr. Greene, that what  
6 is in the Breckenridge decision is the operative set of  
7 background facts, and to the extent that -- the Armstrong  
8 declaration of March 16 deviates from that or goes beyond it,  
9 I should simply disregard what's in the Armstrong declaration  
10 unless there's a specific foundation for it?

11 MR. GREENE: Yes.

12 THE COURT: Well, that's what I'll do, then. I'll  
13 just ride with -- or abide by the content of the Breckenridge  
14 decision; to the extent that there's anything in Paragraph 8  
15 which goes beyond that or which is not supported by the  
16 content of the Breckenridge decision, I'll disregard the  
17 content of Paragraph 8 of the Armstrong declaration.

18 MR. WILSON: Thank you. On Paragraph 9, there's an  
19 allegation, beginning of Page -- Line 18, and it goes until  
20 the next page on Line 7, containing lists of allegations that  
21 the organization did certain things. And the objection to all  
22 those is the same, that there's no showing of personal  
23 knowledge that the organization was who did it.

24 THE COURT: Mr. Greene?

25 MR. GREENE: Our position is that the defendant  
26 should be estopped from making that objection because the very  
27 allegations that it has made in this case, in the Complaint  
28 and in the declaration of Lynn Farny, states that it did

1 engage in a so-called sting operation against Armstrong, which  
2 Scientology claims was in fact sanctioned by the Los Angeles  
3 County Police Department.

4 THE COURT: Does it -- does that declaration  
5 precisely track the language contained in paragraph No. 9?

6 MR. GREENE: No. It doesn't. It -- it --

7 THE COURT: So you want me to go with the content of  
8 the Farny declaration rather than with the content of the  
9 Armstrong declaration, to the extent that the content of the  
10 Armstrong declaration exceeds or is different from the content  
11 of the Farny declaration?

12 MR. GREENE: If I understand you correctly, Judge, I  
13 don't -- in my own words, I don't want you to rely only on the  
14 Farny declaration and throw out what Armstrong says to  
15 counter-balance it, but if you look at them both with respect  
16 to -- as to one another, that's fine.

17 THE COURT: The objection is sustained for the  
18 material in the Armstrong declaration that is objected to; it  
19 is not premised on an adequate foundation. Go ahead.

20 MR. WILSON: The next objection is to -- it begins  
21 on Page 8, Line 18. It is to Paragraphs 13, 14, 15 and 16, in  
22 their entirety, on the grounds that they constitute hearsay  
23 statements made by Mr. Armstrong's attorney, Mr. Flynn.

24 THE COURT: Counsel for defendant?

25 MR. GREENE: Goes to Armstrong's state of mind in  
26 entering into the agreement which is at issue here.

27 THE COURT: All purported statements made by Flynn  
28 to Armstrong and by Armstrong to Flynn contained in the



1 objected-to paragraphs are stricken; that is, the objections  
2 to those materials are sustained. Go ahead.

3 MR. WILSON: Thank you, Your Honor. Paragraph -- on  
4 Page 12, Paragraph 19 continues; as the first sentence, it  
5 says: "The organization continued its fair-game campaign  
6 against me," et cetera. Against the -- against me in  
7 violation of the spirit and letter of the settlement  
8 agreement. Lack of adequate personal knowledge, foundation,  
9 and also it's a legal conclusion as to whether it's in  
10 violation of the letter of the agreement.

11 MR. GREENE: Would you repeat your objections then,  
12 please.

13 THE COURT: Page 12, Lines 5 through -- to 7,  
14 beginning with the words, "Following the December 1986" and  
15 ending with the words "Letter of this settlement agreement."

16 MR. GREENE: Okay.

17 MR. WILSON: And the objection is, no adequate  
18 foundation of personal knowledge and it's a legal conclusion.

19 MR. GREENE: As to no foundation, I think the  
20 foundation is set forth hereafter in Paragraph 20 --

21 THE COURT: In other words, nothing -- that sentence  
22 does not refer to anything except what is in the remainder of  
23 Paragraph 19 and Paragraph 20, correct?

24 MR. GREENE: Twenty -- in addition, Your Honor,  
25 Paragraphs 21, 22, 23 --

26 THE COURT: So that sentence does not refer to  
27 anything except what's contained in the remainder of  
28 Paragraphs 19 and then Paragraphs 20 to 23, correct?



1 MR. GREENE: Yes.

2 THE COURT: I'll strike the first sentence, but I --  
3 on the assertion that Mr. Greene has made. Go ahead.

4 MR. GREENE: Your Honor, may Mr. Morantz be excused  
5 for a couple of moments?

6 THE COURT: Certainly. Go ahead.

7 MR. WILSON: Paragraph 20 purports to list the  
8 violations of the settlement agreement. Again, that's a legal  
9 conclusion.

10 THE COURT: The objection is overruled.

11 MR. WILSON: Thank you. Paragraph 21 refers to a  
12 telephone call from a purported "London Sunday Times"  
13 newspaper who made a statement to Mr. Armstrong; that's  
14 hearsay.

15 THE COURT: Counsel for defendant?

16 MR. GREENE: It goes to Mr. Armstrong's state of  
17 mind and his understanding.

18 THE COURT: The objection is sustained.

19 MR. WILSON: Your Honor, I would like to separately  
20 go through the -- object to the exhibits. I think we've  
21 already taken care of the first exhibit, which is the --

22 THE COURT: Does that dispose of everything in  
23 connection with this Armstrong declaration --

24 MR. WILSON: Yes, but not the exhibits to it.

25 THE COURT: -- of March 16, 1992?

26 MR. WILSON: Yes, but not the exhibits to it.

27 THE COURT: Go ahead and deal with them any way you  
28 want, and I'll just rule on them.

1 MR. WILSON: The first exhibit, which is, I believe,  
2 I think it's Exhibit A, but it's not marked. Lack of  
3 foundation. And also relevance; it's a 1966 document.

4 THE COURT: What is it that you're talking about,  
5 now?

6 MR. WILSON: Your Honor -- I was going into the  
7 exhibits to the Armstrong declaration which appears two  
8 places; however, those exhibits do not appear in the place in  
9 the record that we're at now. Mr. Greene listed it twice, and  
10 the second time he listed it is where he listed all the  
11 exhibits. And we can deal with those now or we can wait until  
12 they come up again later.

13 THE COURT: I think probably you might as well wait  
14 till they come up.

15 MR. WILSON: Okay. That's fine.

16 THE COURT: How much more time are you going to take  
17 in making objections?

18 MR. WILSON: I'm not sure, Your Honor. I'm going to  
19 try to -- perhaps if we could have a ten-minute recess --

20 THE COURT: Counsel, you've had a three-day recess  
21 and then a -- a one-and-a-half-hour recess. And you and Mr.  
22 Greene have known perfectly well what was going on here. And  
23 you have proceeded in the way that you have proceeded. And  
24 what I'm interested in knowing is, what further activity you  
25 have for me to do before I submit the matter. And what's your  
26 answer to that?

27 MR. WILSON: My answer is I'm not sure --

28 THE COURT: Assuming that we eventually get the

1 evidentiary record settled, how long do you think you'd like  
2 to argue?

3 MR. WILSON: Oh. Five, perhaps ten minutes.

4 THE COURT: How about you?

5 MR. GREENE: Fifteen or twenty minutes.

6 THE COURT: Okay. You'll each argue for ten  
7 minutes. Go ahead.

8 MR. WILSON: That will be fine. Item 21 is Exhibit  
9 S, entitled "On Control and Lying." It's unauthenticated and  
10 irrelevant.

11 THE COURT: Is there any dispute regarding the  
12 actual authenticity of this?

13 MR. WILSON: Yes.

14 THE COURT: There is?

15 MR. WILSON: Yes. It's not our document.

16 THE COURT: All right. Mr. Greene?

17 MR. GREENE: Your Honor, this document was an  
18 exhibit in the Yanny proceedings --

19 THE COURT: No, but I don't want you to -- I don't  
20 want you to act as if you're testifying; you don't know what  
21 you're talking about, either, and nobody knows what anybody's  
22 talking about except insofar as you have some record citation--  
23 pardon me -- to corroborate document or found what you say.  
24 Do you have such a thing, or not? If so --

25 MR. GREENE: Your Honor, I do not.

26 THE COURT: -- if so, refer to it; if not, let me  
27 know that.

28 MR. GREENE: I do not.

1 THE COURT: All right. The objection is sustained.  
2 Go ahead.

3 MR. WILSON: Okay. Next is Item 24, it's Exhibit CC  
4 to Mr. Berry's declaration --

5 THE COURT: Just a second. Exhibit CC to the Berry  
6 declaration? Just a second. Is that bound in a separate  
7 packet?

8 MR. WILSON: I don't think so.

9 MR. GREENE: It's big enough to be, Your Honor.

10 THE COURT: What's -- I'm sorry. What's your  
11 objection going to be, defense -- plaintiff?

12 MR. WILSON: It's irrelevant; it's a stipulation of  
13 evidence in a case involving Mary Sue Hubbard and has  
14 absolutely no relevance to this proceeding.

15 THE COURT: Plaintiff? Plaintiff's objection is  
16 irrelevant, and defendant, your position is what?

17 MR. GREENE: That it is relevant because it pertains  
18 to activities during Armstrong's tenure in Scientology and  
19 that it is illustrative of the kind of material --

20 THE COURT: Let me have it, then. I -- let me have  
21 Exhibit CC to the Berry declaration, Ms. Cervantes; it's not  
22 up here on the Bench. Or if one of you lawyers can get it for  
23 me, that's just fine.

24 MR. GREENE: Yes, Your Honor.

25 THE COURT: You can give it to Ms. Cervantes.

26 MR. WILSON: Your Honor, you can -- we have a copy  
27 here.

28 THE COURT: Is the document you're talking about the

1 document that goes on for what looks like 280-some-odd pages?

2 MR. WILSON: Yes.

3 THE COURT: And your theory about the relevancy of  
4 that is what, Counsel for plaintiff?

5 MR. GREENE: Is that --

6 THE COURT: Or for defendant, I mean?

7 MR. GREENE: Our theory is that the reason it's  
8 relevant is that it goes to show the conduct of the  
9 Scientology organization during the period of time that  
10 Armstrong was a member, and is illustrative of Scientology's  
11 activities and why they have settlement agreements such as  
12 this which they're asking you to enforce.

13 THE COURT: Where does it show that?

14 MR. GREENE: There is nothing in that stipulation of  
15 evidence that talks about settlement agreement, Your Honor.  
16 What I'm saying is that that stipulation of evidence in that  
17 criminal prosecution involving Scientology organization  
18 illustrates why it is that the agreement which it's asking  
19 this Court to enforce is a violation of public policy.

20 THE COURT: Where? Where does it show that?

21 MR. GREENE: Throughout that entire stipulation it  
22 documents by stipulation pursuant to guilty pleas criminal  
23 conduct engaged in by agents of the organization.

24 THE COURT: Where? Make a reference and tell me  
25 what argument is makeable from this.

26 MR. GREENE: Armstrong is -- was not supposed to  
27 discuss any of this, as part of what the settlement agreement  
28 is in this case.



1 THE COURT: So what's the point? You tell me what  
2 it is that you maintain --

3 MR. GREENE: The point is is that the Scientology  
4 organization's highest officials pled guilty to stealing  
5 governmental documents, to obstructing justice, to lying to  
6 governmental agencies. Armstrong has knowledge of that and is  
7 not supposed to talk about it.

8 THE COURT: He has knowledge about it from having  
9 read this document?

10 MR. GREENE: From having read that document and from  
11 his own first-hand intimate familiarity with Scientology's  
12 covert and intelligence operations, as found at the end of  
13 Judge Breckenridge's decision.

14 THE COURT: Your theory?

15 MR. WILSON: That was not stipulated to, and this  
16 client was not part of that, and on Mr. Greene's theory, then  
17 any --

18 THE COURT: What do you mean when you say this  
19 client was not part of it?

20 MR. WILSON: This --

21 THE COURT: You mean it was stipulated to by --

22 MR. WILSON: It was not stipulated to by anybody.

23 THE COURT: Oh, wasn't it, really? It's not a  
24 stipulation? I had understood that it was.

25 MR. WILSON: None of the defendants.

26 THE COURT: I had understood that it was a  
27 stipulation.

28 MR. WILSON: It's my understanding that it was



1 offered by the government as a stipulation, but not stipulated  
2 to. And also, Your Honor, on Mr. Greene's --

3 THE COURT: Really? I have it -- am I mistaken that  
4 it was stipulated to by Mr. Buden on behalf of Defendant Mary  
5 Sue Hubbard and Mr. Hertzberg on behalf of her and Ms. Hubbard  
6 on behalf of herself, and --

7 MR. WILSON: Not as to the truth of the evidence.  
8 Just -- that was what the government would show if the  
9 government put a case on.

10 MR. GREENE: And that stipulation, I believe it's  
11 reflected in there, was part of the agreement wherein the  
12 government accepted guilty pleas --

13 THE COURT: Why should there be any doubt about it?  
14 Is there a foundation that shows anything? Does anybody give  
15 any explanation for what it is; how it was reached; what its  
16 foundation was?

17 MR. WILSON: No.

18 THE COURT: Does that appear anywhere in the record,  
19 Mr. Greene?

20 MR. GREENE: It's the subject -- or it's mentioned  
21 in a federal appellate court decision, but in this record,  
22 before this Court, in terms of -- none of us were involved in  
23 that action and don't have personal knowledge, no, sir.

24 THE COURT: The objection is sustained. Go ahead  
25 with whatever else you're going to do.

26 MR. WILSON: Thank you, Your Honor. Next, there's a  
27 number of items which I would like to lump together in the  
28 same objection, and it's basically relevance, and it's items--

1 and hearsay -- and it's Items 26 through 32; they're all from  
2 Mr. Berry's declaration. The first three, 26, 27 and -- I'm  
3 sorry, 26 and 27 -- are pieces from a book called "A Piece of  
4 Blue Sky"; they're hearsay; they're not authenticated --

5 THE COURT: They're -- that's attached to the Graham  
6 Berry declaration?

7 MR. WILSON: Yes, sir.

8 THE COURT: As what?

9 MR. WILSON: As Exhibit F and G.

10 THE COURT: F and G? Well, no; Exhibit F is the  
11 partial transcript of August 6, 1991 proceedings before Judge  
12 Karvass (phonetic).

13 MR. GREENE: It's -- Your Honor, we're talking about  
14 a different declaration, if I may clarify. This is the Berry  
15 declaration of March 16, 1992 --

16 THE COURT: Do you have that --

17 MR. GREENE: -- with a Marin County caption.

18 THE COURT: Help me get that, Ms. Cervantes. I Beg  
19 your pardon? State again what we're looking for, Counsel.

20 MR. GREENE: We're looking for the declaration of  
21 Graham Berry dated -- I think filed on March 16th, 1992, while  
22 the matter still had the Marin County caption.

23 (Pause)

24 MR. GREENE: Perhaps the Court -- Your Honor could  
25 expedite it if I gave you my copy.

26 THE COURT: You can do that if you'd like.

27 MR. GREENE: I have it if you want it.

28 THE COURT: You can do that if you'd like.

1 (Pause)

2 THE COURT: Tell me what you're objecting to, Mr.  
3 Wilson

4 MR. WILSON: Okay. The Exhibit F, "A Piece of Blue  
5 Sky"; Exhibit G --

6 THE COURT: Exhibit F?

7 MR. WILSON: Right. That's the Berry declaration of  
8 March 16th.

9 THE COURT: The basis for the objection?

10 MR. WILSON: It's unauthenticated, hearsay, and  
11 irrelevant.

12 THE COURT: Defendant?

13 MR. GREENE: Just a second, Your Honor. One, the  
14 purpose that it's being submitted is not for the truth of  
15 anything stated therein. It is -- in order to show that the  
16 Scientology organization is a valid and extant subject of  
17 intense public controversy. For that reason, it is relevant  
18 because part of what the effect of enforcing the settlement  
19 agreement would be would be to stifle and silence any  
20 contribution Armstrong could make to that controversy.

21 THE COURT: Are you prepared to stipulate to the  
22 purpose for which counsel says that it's being offered?

23 MR. WILSON: Give me a minute, Your Honor. We'll  
24 stipulate that the Church of Scientology is a subject of  
25 intense scrutiny by the press, but all of this -- but -- but I  
26 will not stipulate to admitting all this evidence just  
27 because --

28 THE COURT: Just a second.

1 MR. WILSON: -- that's what it's offered for.

2 THE COURT: Does that stipulation accomplish what  
3 you think you're trying to prove?

4 MR. WILSON: Not quite, Your Honor, because where --

5 THE COURT: All right. That's fine. No, you don't  
6 have to give any reasons. The objection is sustained.

7 MR. WILSON: The same objection is to --

8 THE COURT: Now, that's an objection to No. 26?

9 MR. WILSON: Right. 27 is --

10 THE COURT: 27.

11 MR. WILSON: 28.

12 THE COURT: 28.

13 MR. WILSON: 29.

14 THE COURT: Just a second. 29.

15 MR. GREENE: With respect to those other items, Your  
16 Honor --

17 THE COURT: Just a second, Counsel.

18 MR. GREENE: Yes, sir.

19 (Pause)

20 THE COURT: Yes; I intend to sustain the objections  
21 to Items 26, 27, 28 and 29.

22 MR. WILSON: 30 is the same.

23 THE COURT: 30, I intend to sustain the objection.

24 MR. GREENE: That would be to items --

25 MR. WILSON: And 31 as well.

26 THE COURT: Just a second.

27 MR. WILSON: I'm sorry; I take that back.

28 THE COURT: 31 is something called Project Quaker.

1 MR. WILSON: I misspoke, Your Honor. I have it  
2 here.

3 THE COURT: All right. Go ahead.

4 MR. GREENE: With respect to the other items on --

5 THE COURT: There's really nothing pending right  
6 now, Mr. Greene. I've sustained objections to --

7 MR. GREENE: Yes, Your Honor.

8 THE COURT: -- 26 through 30.

9 MR. GREENE: And those are the items having to do  
10 with any -- with the books or the newspaper articles?

11 THE COURT: It begins with "A Piece of Blue Sky" and  
12 it ends with "A Piece of Blue Sky."

13 MR. GREENE: Right.

14 THE COURT: And in the middle it's got a couple of  
15 newspaper articles.

16 (Pause)

17 THE COURT: Will you be able to make your next  
18 objection?

19 MR. WILSON: Yes, I'm sorry, Your Honor.

20 THE COURT: Please go ahead.

21 MR. WILSON: Next, 31, Project Quaker, is  
22 unauthenticated. It's not our document.

23 THE COURT: Okay, there's an objection. Defendant,  
24 do you have anything to say concerning that?

25 MR. GREENE: No, Your Honor.

26 THE COURT: Exhibit V. So you're in effect --

27 MR. GREENE: We concede that, Your Honor.

28 THE COURT: -- conceding, yes. Okay. Exhibit 31, a

1 five-page document entitled "Project Quaker," objection is  
2 sustained.

3 MR. WILSON: The same for Exhibit 32.

4 THE COURT: Just a second. Do you take the same  
5 position regarding it, Counsel for plaintiff?

6 MR. GREENE: No, we don't, Your Honor.

7 THE COURT: Wait a minute. Counsel for plaintiff.

8 MR. GREENE: Oh, I'm sorry.

9 THE COURT: Do you take the same position regarding  
10 it?

11 MR. WILSON: Yes, sir.

12 THE COURT: Okay. Just a minute. All right, go  
13 ahead, Counsel for defendant. What do you want to say about  
14 this?

15 MR. GREENE: That falls within the scope of Judge  
16 Breckenridge's decision.

17 THE COURT: Page and line?

18 MR. GREENE: Just a moment, Your Honor.

19 (Pause)

20 MR. GREENE: Yes, Your Honor. Page 13, Lines 11  
21 through 22.

22 (Pause)

23 MR. WILSON: Excuse me, counsel, is that Page 13,  
24 line 11 through 22?

25 MR. GREENE:

26 Yes.

27 THE COURT: I don't have a Page 13. Do you mean in  
28 the appendix portion?



1 MR. GREENE: Yes, I do, Your Honor.

2 THE COURT: There is a Page 13 in the appendix  
3 portion. Eleven through 22. Just a second. How does that  
4 deal with or provide a foundation for this otherwise  
5 unexplained document?

6 MR. GREENE: It tracks the precise language in the  
7 document that's under consideration, namely, that a  
8 suppressive person may be, quote, "tricked, cheated, lied to,  
9 sued or destroyed." Close quote. And it's also referred to  
10 in the --

11 THE COURT: I don't --

12 MR. GREENE: -- appellate affirmation of Judge  
13 Breckenridge's decision. That's at 232 Cal Ap 3rd 1060.

14 THE COURT: Yes, but I don't see it as saying that.  
15 "Tricked, cheated, lied to, sued or destroyed." That's the  
16 language Judge Breckenridge uses.

17 MR. GREENE: Right.

18 THE COURT: That language does not appear in this  
19 Exhibit No. 31; there's different lang -- Exhibit 32 --  
20 there's different language that appears in Exhibit 32.

21 MR. GREENE: Maybe I'm not tracking. Is that --  
22 you're looking at the exhibit that says "penalties for lower  
23 conditions," right?

24 THE COURT: Yes, I'm looking at your client's  
25 submittal No. 32, which is Exhibit W to the declaration --

26 MR. GREENE: Right. And --

27 THE COURT: And the question that is raised is  
28 whether or not this is authentic. And the contention that

1 you're making is that it is authentic; you can tell by  
2 comparing it with the language contained in Judge  
3 Breckenridge's decision. But the language compared --  
4 contained in Judge Breckenridge's decision purports to be a  
5 direct quotation from something --

6 MR. GREENE: Yes.

7 THE COURT: -- but it can't be a direct quotation  
8 from this document because that is not the -- that is not the  
9 language that appears in this document.

10 MR. GREENE: I respectfully disagree and would  
11 direct the Court's attention to the last paragraph of the  
12 document --

13 THE COURT: All right. Let me do this: you read  
14 what Judge Breckenridge wrote and I'll read what there is in  
15 the document under question, right? And you tell me --

16 MR. GREENE: Right.

17 THE COURT: -- when we begin to diverge. All right?  
18 "Tricked [comma], sued or lied to or destroyed."

19 MR. GREENE: It's not exactly precise.

20 THE COURT: It's not only not exactly precise, but  
21 the language Judge Breckenridge quotes contains another word.  
22 Not only is the order different but the language is different.  
23 The thought is similar, but the language is different. The  
24 objection is sustained.

25 MR. WILSON: Thank you, Your Honor. Next, No. 34, a  
26 letter to Michael. It's irrelevant. It's also  
27 unauthenticated and it contains hearsay.

28 THE COURT: Just a second. Exhibit Y.

1 (Pause)

2 THE COURT: Counsel for defendant?

3 MR. GREENE: That is conceded, Your Honor.

4 THE COURT: Sustained.

5 MR. WILSON: Thank you, Your Honor. Next, Exhibit  
6 35, entitled "Sanctuary Memo," the same objection. It's  
7 Unauthenticated.

8 THE COURT: Exhibit 35?

9 MR. WILSON: I'm sorry. It's "Sentencing  
10 Memorandum." I misread mine. It's irrelevant. It's also --

11 THE COURT: Counsel for defendant?

12 MR. GREENE: That's conceded, Your Honor.

13 THE COURT: Conceded. Sustained.

14 MR. WILSON: The next is No. 36. It is  
15 unauthenticated hearsay.

16 THE COURT: Just a second. Counsel for defendant?

17 (Pause)

18 MR. GREENE: For these proceedings, it's conceded.

19 THE COURT: Sustained.

20 MR. WILSON: Thank you. Next, Your Honor, I can do  
21 as a group. Mr. -- the declarations of Mr. Armstrong that are  
22 Nos. 38 through 45, on the basis of relevance. And with the  
23 exception -- Your Honor, I'm sorry -- of Exhibit 44.

24 THE COURT: Which you don't object to, right?

25 MR. WILSON: Which we don't object to.

26 THE COURT: All right.

27 MR. WILSON: But the other ones are --

28 THE COURT: Where is the -- where is that Armstrong

1 declaration?

2 MR. WILSON: Those are a separate bound brad. I  
3 think they're entitled "Declarations of Mr. Armstrong," and I  
4 think they were filed in the Marin County action.

5 THE COURT: Get them for me please, Ms. Cervantes.

6 (Pause)

7 THE COURT: Is that it? It's a thing, something  
8 called "Declarations of Gerald Armstrong," filed in support of  
9 amicus curiae brief of Joseph A. Yanny in opposition to  
10 plaintiff's order to show cause re preliminary injunction,  
11 filed March 17, 1992, in Marin County?

12 MR. WILSON: That's correct. And the objection  
13 being that the declarations, except for the December 3  
14 declaration, all those declarations predate the filing of this  
15 litigation; No. 38 is March 19 of '86; 39 is also an '86  
16 declaration; 40 is an '83 declaration; 41 is an '86  
17 declaration, as is 42; 43 is from March of '90; and 45 is from  
18 1985. To the extent that Mr. Armstrong had something to say,  
19 I think he said it all in his previous declaration that we  
20 went through, and I really hope not to have to go through  
21 those declarations as well.

22 THE COURT: Counsel for Armstrong?

23 MR. GREENE: All of those declarations, and each of  
24 them, are relevant; one, to show Armstrong's knowledge of the  
25 Scientology organization; and two, the conduct engaged in by  
26 the Scientology organization against Armstrong; three, provide  
27 the background information, what it is that the Scientology  
28 organization was seeking to remove from the public record in

1 consequence of the agreement at issue here. For those  
2 reasons, each one of those declarations are relevant.

3 THE COURT: What are you talking about, the public  
4 record?

5 MR. GREENE: That those various declarations were  
6 filed in litigation that Mr. Flynn, as attorney for people who  
7 were suing Scientology in various different litigations. All  
8 of those declarations discuss --

9 THE COURT: The objections are overruled.

10 MR. WILSON: Thank you, Your Honor. The next, the  
11 declarations of Mr. Flynn -- 46, 47, 48 -- on the same basis.  
12 And also on the basis, Your Honor, that -- and I did not  
13 proffer this evidence; I will if necessary -- that we  
14 attempted to take the declaration of -- the deposition of Mr.  
15 Flynn twice by giving notice to defendants, tried to have them  
16 stipulate to it; they refused.

17 That's all described in Ms. Bartilson's declaration,  
18 and defendants successfully have prevented that by the filing  
19 of a motion to quash. The grounds for that motion to quash is  
20 that proper notice wasn't given in terms of the number of  
21 days, and the date that notice was given was the day of the  
22 riots, which is why personal service could not be made. And  
23 on that basis as well, we believe that they should be estopped  
24 from asserting those -- from offering those declarations.

25 THE COURT: Why? You want to take his deposition to  
26 do what; contradict the material contained in the  
27 declarations?

28 MR. WILSON: Those declarations, and also the

1 statements that Mr. Armstrong made in his declaration that was  
2 submitted as to what Mr. Flynn told him and the fact that he--

3 THE COURT: But I've excluded that material. I  
4 don't care what somebody says his lawyer told him.

5 MR. WILSON: Well, in that case --

6 THE COURT: You want to object to the Flynn  
7 declarations, or don't you?

8 MR. WILSON: Yes, on the basis of relevance.

9 MR. GREENE: The reason that they're relevant, Your  
10 Honor, is because they -- the Flynn declarations --

11 THE COURT: You'd better get them for me, Ms.  
12 Cervantes. Declarations of Michael J. Flynn, filed in support  
13 of the amicus brief of Yanny in Marin County, September 21,  
14 1983; is that right? Or 1988?

15 MR. GREENE: 1983 is the first declaration.

16 THE COURT: All right. Where would that be?

17 MR. GREENE: That would have been filed March 16,  
18 '92 -- or 16, '92, in Marin County. And that's a separate  
19 bundle.

20 THE COURT: Irrespective of how I rule -- while Ms.  
21 Cervantes is getting this material -- irrespective of how I  
22 rule, when would you be ready to try this case, assuming that  
23 it survives all the attacks on it?

24 MR. WILSON: Probably six to nine months or for --

25 THE COURT: To whom is it assigned in the I.C.  
26 system?

27 MR. WILSON: Judge Horowitz.

28 THE COURT: Who?



1 MS. BARTILSON: Judge Horowitz.

2 MR. WILSON: Perhaps sooner than that, Your Honor.  
3 We haven't been successful in getting anybody's deposition  
4 yet.

5 THE COURT: Whose deposition do you want to take  
6 besides Armstrong?

7 MR. WILSON: Well, we've noticed Mr. Armstrong's  
8 deposition three times.

9 THE COURT: And?

10 MR. WILSON: Hasn't shown up at all. And if you'd  
11 like me to give you the letters --

12 THE COURT: Not interested at all. You just do  
13 whatever you need to do to litigate your case.

14 (Pause)

15 THE COURT: Can you describe the thing that the  
16 objection is being made to more fully, Counsel, so that --

17 MR. WILSON: Yes, Your Honor.

18 THE COURT: -- there's no doubt about exactly what  
19 documents you're trying to attack?

20 MR. WILSON: It's -- I just had them in front of me  
21 a minute ago, Your Honor, I'm sorry. Declarations of Michael  
22 J. Flynn as filed in support of amicus curiae brief of Joseph  
23 A. Yanny in opposition to plaintiff's order to show cause re  
24 preliminary injunction, Marin County action. And there's  
25 three of them. They're --

26 THE COURT: Are they all under the same cover sheet?

27 MR. WILSON: Yeah, I think they are. A, B, and C.

28 MR. GREENE: Yes, they are.

1 (Pause)

2 THE COURT: Thank you. Go ahead. Tell me what your  
3 objections are.

4 MR. WILSON: Relevance. They're well before the  
5 time period at issue here, and unlike arguing Mr. Armstrong's  
6 declaration, they don't go to show what Mr. Armstrong knew  
7 except through hearsay of Mr. Flynn or anything that I can  
8 conceivably see is relevant to this action.

9 THE COURT: Counsel for defendant?

10 MR. GREENE: The reason -- first of all, the first  
11 one is a declaration that was filed in Armstrong I; it was  
12 part of the record there. Two --

13 THE COURT: So what? The question is whether it's  
14 relevant in this case.

15 MR. GREENE: Okay. The reason so what is because  
16 the declarations describe the extraordinary --

17 THE COURT: Where? Just tell me page and line  
18 rather than characterizing them or putting your gloss on them.  
19 Just say what language in it you think it pertinent to some  
20 issue in this case that I'm going to have to adjudicate.

21 MR. GREENE: Yes, Your Honor. The entirety of the  
22 affidavit in Armstrong I, describing what Flynn --

23 THE COURT: Where? What page and line? You mean  
24 that he's a Massachusetts lawyer, and that he works in  
25 Massachusetts and that he makes this affidavit to assist the  
26 Court in understanding, quote, "the general and specific  
27 contexts of Scientology's purpose and intent in bringing this  
28 latest harassive legal proceeding against me and specifically

1 in support of my opposition to this latest contempt charge",  
2 end quote? You mean that's going to be pertinent in the case,  
3 and--

4 MR. GREENE: Yes.

5 THE COURT: Oh, really? How?

6 MR. GREENE: Because it goes to the issue of unclean  
7 hands, and it goes to the issue of what the context -- factual  
8 context of the settlement agreement is.

9 THE COURT: Do you mean the argumentative assertion  
10 made by this declarant on the 21st of September, 1983,  
11 pertains to the unclean hands of any party in this case,  
12 pertinent to this motion?

13 MR. GREENE: The factual elucidation following that,  
14 yes. If you were to look at that --

15 THE COURT: I'll strike all three declarations on  
16 the grounds of relevancy and on the grounds of evidence code  
17 352. The declarations are so prolix and so laced with  
18 argumentative and conclusory material as to require -- and  
19 material which very, very substantially predates the pertinent  
20 details of the instant case as to require both the undue  
21 consumption of time and the creation of substantial danger of  
22 undue prejudice and confusion of the issues, and misleading  
23 the fact-finder. Go right ahead, Counsel for plaintiff.

24 MR. WILSON: Thank you, Your Honor. Next is 49,  
25 which is Declaration of Vickie Aznaran of 9 August of '88.  
26 That's Exhibit I-A. On the basis of relevance. It's a  
27 declaration of Vickie Aznaran; it doesn't mention Gerald  
28 Armstrong and has nothing to do with him.

1 THE COURT: This was evidence in support of  
2 defendant's opposition to Scientology's motion for preliminary  
3 injunction; that's what I have as 49.

4 MR. WILSON: Yeah, and then the specific -- what I  
5 have as 49 is -- then the specific thing under that is Exhibit  
6 I-A, which is the declaration of Vickie Aznaran. And I have  
7 as 50, just so that we can keep it straight, I-B, which is the  
8 Armstrong I Complaint.

9 THE COURT: Yes. Well, it's at this point that we  
10 got slightly out of phase. I have that -- I think your  
11 numbering is better than my numbering, but I call everything  
12 one number more than you do, from here on out --

13 MR. WILSON: Okay. Well, then, I'll --

14 THE COURT: -- from the midmorning recess out. But  
15 what's your objection to the Aznaran declaration?

16 MR. WILSON: Relevance. It's -- Aznaran's  
17 declaration doesn't mention Mr. Armstrong; it really has  
18 nothing to do with him. And also 352.

19 THE COURT: What's your theory, Counsel for  
20 defendant?

21 MR. GREENE: Just getting my file back here in a  
22 second, Your Honor. The theory is that Vickie Aznaran was the  
23 president of RTC, was very high in the chain of command. In  
24 that declaration I believe she talks about what the litigation  
25 strategies are, employed by the Scientology organization; how  
26 she personally destroyed documents in Armstrong I that Judge  
27 Breckenridge had ordered produced, and the reason --

28 THE COURT: Make -- make a reference to page and

1 line, then, if you think you've got something that you think  
2 is going to be pertinent to the issues.

3 MR. GREENE: Okay.

4 (Pause)

5 MR. GREENE: Yes, Your Honor. To --

6 THE COURT: Page and line, and then let me see it,  
7 or Ms. Cervantes, maybe you can find this material that  
8 they're talking about here so that Mr. Greene and I can look  
9 on the same piece of paper at once.

10 MR. GREENE: The page number appears to have been  
11 renumbered, and it's -- it's -- at the bottom of the page it  
12 says 41; it's not Page 41 of the declaration. It's Page 5.  
13 The paragraph is 12. Lines 6 through 18.

14 THE COURT: So it's -- the citation is either 5, 6  
15 through 18, or 41, 6 through 18, depending on which numbering  
16 scheme we use, right?

17 MR. GREENE: Yeah, and the 5 is covered over by the  
18 41.

19 THE COURT: Let's take a look at it.

20 MR. GREENE: All right. This is the document that's  
21 entitled "Evidence in Support of Defendant's Opposition to  
22 Scientology's Motion for Preliminary Injunction," filed March  
23 16th, '92, in Marin County, Volume I.

24 (Pause)

25 THE COURT: I'm sorry, I can't find the page  
26 reference that you give at all in the material that was filed  
27 on the 16th of March, 1992. Could you be more specific about  
28 it?

1 MR. GREENE: Sure. Let's start at Exhibit A, which  
2 is hiding directly behind Exhibit 1 at the very front.

3 THE COURT: Yes, sir.

4 MR. GREENE: Okay. And then there -- the first page  
5 after -- behind the face page, it says "Declaration of Vickie  
6 Aznaran"?

7 THE COURT: That's not really what it says; it says  
8 opposition to motion to disqualify plaintiff's counsel.

9 MR. GREENE: Oh, you're right. I'm sorry. You're  
10 absolutely right. There's that face page, then the next page  
11 says "Declaration of Vickie Aznaran"?

12 THE COURT: Yes, sir.

13 MR. GREENE: And at the bottom it says 37?

14 THE COURT: Yes, sir.

15 MR. GREENE: In handwriting. So if we go to 41  
16 following. Lines 6 through 18 specifically address Armstrong  
17 I.

18 THE COURT: Just a second.

19 (Pause)

20 THE COURT: So in other words, this person is  
21 admitting in this declaration at this portion to the  
22 commission of a felony?

23 MR. GREENE: Yes, Your Honor. It appears that way.

24 THE COURT: And I'm supposed to believe her?

25 MR. GREENE: Yes, Your Honor.

26 THE COURT: I'm supposed to believe that she -- she  
27 says she committed a felony by in effect doctoring evidence  
28 and I'm supposed to believe that evidence; that's your theory.



1 Right?

2 MR. GREENE: Particular -- yes, it is. Particularly  
3 in light of the --

4 THE COURT: All right. What's your theory?

5 MR. WILSON: My -- it's not a theory. I don't see  
6 the relevance to this -- to this case. This is something --

7 THE COURT: What is the relevance to this case?

8 MR. GREENE: The relevance to this case is that what  
9 Vickie Aznaran admitted doing, destroying documents, is the  
10 same thing that Scientology seeks to accomplish by using the  
11 judicial system in this very proceeding.

12 THE COURT: Oh, well on that basis, I'll exclude it.  
13 If that's your theory. The objection is sustained.

14 MR. WILSON: Thank you, Your Honor. 54, Your Honor,  
15 which I think you might have as 55, which is the cross-  
16 complaint?

17 THE COURT: Yes.

18 MR. WILSON: Should be excluded on the same basis  
19 that you previously excluded the Third Amended Cross-  
20 Complaint, which I think you probably have as 56.

21 THE COURT: Wouldn't that be your theory, too, Mr.  
22 Ford, that if I've excluded exhibit -- if I've excluded the  
23 Third Amended Cross-Complaint, I should exclude the original  
24 Cross-Complaint too, right?

25 MR. GREENE: No, Your Honor. My -- theory would be  
26 that, as to the Third Amended -- the exhibit to the Third  
27 Amended Cross-Complaint, to ask you to reconsider your  
28 exclusion.

1 THE COURT: I understand. The objection is  
2 sustained as to the original Cross-Complaint and I reaffirm my  
3 ruling as to the Third Amended Cross-Complaint. Go ahead.

4 MR. WILSON: Number 67, which I think you have as  
5 68, an unpublished Court of Appeal opinion. I think that's in  
6 Aznaran --

7 THE COURT: No; that was in Armstrong I.

8 MR. WILSON: I'm sorry, Armstrong I. Armstrong I,  
9 on the basis that if it's for precedent, it's unpublished; if  
10 it's -- it can't be for evidence.

11 THE COURT: Why not?

12 MR. WILSON: It has no tendency to prove any of the  
13 matters. There's no findings made in it.

14 THE COURT: Well, let's just take a look at 987,  
15 California Rules of Court. That citation is mistaken; it  
16 should be -- What's your theory, defense counsel?

17 MR. GREENE: The theory is, one, is that it shows  
18 the history of the litigation in Armstrong I, but more  
19 important, what there -- and the reason that it has  
20 evidentiary -- more evidentiary value is because after this  
21 unpublished decision, there was further appellate litigation.  
22 And Paragraphs 4-A and B of the settlement agreement require,  
23 by their express terms, Armstrong not to oppose any litigation  
24 in the Court of Appeal of the decision of Judge Breckenridge.  
25 So those matters are directly relevant to the --

26 THE COURT: Make the reference you're referring or  
27 you're talking about to the -- pardon me -- to the agreement  
28 so that I can see what it is that you're talking about.

1 (Pause)

2 MR. GREENE: Okay. Referencing --

3 THE COURT: Let's go to the agreement first.

4 MR. GREENE: Yes, sir, we're looking at the  
5 agreement. And on Page 3 --

6 THE COURT: Isn't the agreement in this packet of  
7 papers? No, I guess it isn't. Where -- where would I find  
8 the agreement in these various papers? It pops up in two or  
9 three places.

10 MR. WILSON: You would find it attached to the  
11 Complaint.

12 THE COURT: Where else?

13 MR. GREENE: It's also attached as Exhibit A to Mr.  
14 Berry's declaration in this Court, filed May 8th.

15 THE COURT: Okay. And page and line? In that  
16 agreement?

17 MR. GREENE: Yes. Page 4, Paragraph A and Paragraph  
18 B. Finishing on the top of Page 5.

19 (Pause)

20 THE COURT: Why do I have to know anything about  
21 what happened in Case No. B005912 in the Court of Appeal?  
22 There is no contention that anything concerning that case has  
23 been violated by Armstrong and that's not one of the issues  
24 before me in the application for preliminary injunction.

25 MR. GREENE: The issue, from the defense  
26 perspective, is that what plaintiff is asking the Court to  
27 enforce is part of a package, the overall purpose of which is  
28 to obstruct justice by suppressing evidence. The provisions

1 of the settlement agreement which relate to litigating Judge  
2 Breckenridge's decision on appeal give meaning to that.

3 THE COURT: What do you mean?

4 MR. GREENE: What I mean is that the meaning that's  
5 provided is that -- the purpose of the settlement was to  
6 eliminate -- in part was to eliminate the Breckenridge  
7 decision in anything that had -- was related to Breckenridge's  
8 decision. And so, taking an appeal of Breckenridge's decision  
9 and having it as part of the settlement agreement, a promise  
10 not to oppose the appeal, casts an unmistakable gloss on the  
11 provisions that plaintiff is asking the Court now to enforce.

12 THE COURT: What are you talking about? Where do  
13 you think that -- in other words, you're saying that Armstrong  
14 agreed, in effect, to take a dive in the appeal?

15 MR. GREENE: Right. That's --

16 THE COURT: Where does it say that?

17 MR. GREENE: Doesn't say to take a dive, but it sure  
18 says that in -- in fancy English on Page 4, Paragraph B,  
19 finishing on Page 5.

20 THE COURT: Show me where.

21 MR. GREENE: Okay. Five lines up from the bottom of  
22 4.

23 THE COURT: Yeah.

24 MR. GREENE: The sentence starting -- or actually,  
25 one up. "This appeal shall be maintained notwithstanding this  
26 agreement."

27 THE COURT: The appellant was the other side, right,  
28 was Scientology, right?

1 MR. GREENE: Plaintiff here, correct.

2 THE COURT: No. The appellant was Scientology.

3 MR. GREENE: Right. The appellant was Scientology.

4 THE COURT: Yes. Go ahead.

5 MR. GREENE: Okay. Plaintiff is Armstrong. Cross-  
6 complainant --

7 THE COURT: Yes.

8 MR. GREENE: -- here in the settlement agreement.

9 READING:

10 "Plaintiff agrees to waive any rights he may have to  
11 take any further appeals from any decision  
12 eventually reached by the Court of Appeal, or any  
13 rights he may have to oppose [paren] (by responding  
14 brief or any other means) [close paren] any further  
15 appeals taken by the Church of Scientology of  
16 California. The Church of Scientology of California  
17 shall have the right to file any further appeals it  
18 deems necessary."

19 MR. GREENE: That's dive language, Your Honor.

20 THE COURT: Well, it doesn't con -- it doesn't  
21 affect what happens in the Court of Appeal; it affects only  
22 what happens after disposition by the Court of Appeal; does it  
23 not?

24 MR. GREENE: But that's why -- that's why the --

25 THE COURT: Is the answer to that question "yes"?

26 MR. GREENE: The answer is that it does affect.  
27 That this language does affect what happens in the Court of  
28 Appeal, and that's why the exhibit where we started from is

1 relevant. Because --

2 THE COURT: Wait a minute. I think we have --

3 MR. GREENE: -- appellate opinion --

4 THE COURT: -- I think we have a threshold issue,  
5 then, that we ought to really ventilate now. The -- the  
6 following sentence seems to me to refer to events that would  
7 occur after decision by the Court of Appeal; it's the sentence  
8 that begins,

9 READING:

10 "Plaintiff agrees to waive any rights he may have to  
11 take any further appeals from any decision  
12 eventually reached by the Court of Appeal or any  
13 rights he may have to oppose,"

14 and so forth. That refers only to events that occur  
15 after decision by the Court of Appeal, right?

16 In the first place, you have a problem: it's --  
17 it's -- it's drafted as though whoever drafted it didn't  
18 understand the litigation process, right?

19 MR. GREENE: No, Your Honor, it's precisely the  
20 opposite. They understood it completely, and if I could just  
21 fill the Court in a little bit --

22 THE COURT: They must not have understood it because  
23 there is no appeal from a decision of the Court of Appeal.

24 MR. GREENE: Well, yeah, that's -- I mean, when you  
25 petition the California Supreme Court for review.

26 THE COURT: That's the opposite of an appeal.

27 MR. GREENE: That's --

28 THE COURT: That's a petition for review.



1 MR. GREENE: -- that's a petition for review, but  
2 it's an appeal as to the decision of the lower court.

3 THE COURT: But it's not an appeal at all; it's a  
4 petition for review. "Appeal" is a word that refers to review  
5 by an appellate court as a matter of right. But there is no  
6 appeal from a decision -- from this decision, at least -- of  
7 the California Court of Appeal. The only method of review  
8 intrinsic to the California courts would be, as to this  
9 particular decision, given all the factual context of the  
10 decision, by petition for review to the California Supreme  
11 Court, right?

12 MR. GREENE: That's the mechanism for --

13 THE COURT: So whoever wrote this must not have  
14 understood the mechanism of review of determinations of  
15 intermediate appellate courts, correct?

16 MR. GREENE: If the person that wrote it is held to  
17 a hypertechnical use of language, yes. What I want to call  
18 the Court's attention to is that in this case there were two  
19 appeals --

20 THE COURT: All right. All right. Let's --

21 MR. GREENE: -- there were two appeals --

22 THE COURT: Just a second. Let's deal with -- let's  
23 deal with that for just a moment. When this agreement was  
24 written, did it or did it not require that the -- that  
25 Armstrong withdraw any opposition that he had to the appeal of  
26 the Church of Scientology of California?

27 MR. GREENE: There is nothing on the face of the  
28 agreement which says Mr. Armstrong, you are required to

1 withdraw.

2 THE COURT: So the only thing that he was obligating  
3 himself to do is not to oppose any post-determination by the  
4 Court of Appeal steps that the Church of Scientology would  
5 take, right?

6 MR. GREENE: Yeah.

7 THE COURT: Mr. Ford, are you --

8 MR. GREENE: Greene.

9 THE COURT: Isn't that correct?

10 MR. GREENE: Yes.

11 THE COURT: So it wasn't that he was withdrawing  
12 opposition or agreeing not to oppose the appeal that  
13 culminated in the decision of December 18, 1988 or 1989 or  
14 whenever it is; he was, rather, agreeing not to oppose some  
15 attack that the Church of Scientology would make on that  
16 decision, when, as, and if that decision came down, right?

17 MR. GREENE: Or -- yes.

18 THE COURT: All right.

19 MR. GREENE: Or on any further decision if the  
20 appeal of Scientology was rejected, which it was, as moot.

21 THE COURT: Yes. And then what is it that you want  
22 me to understand by looking at this decision?

23 MR. GREENE: What I want you to understand by  
24 looking at that decision is that that decision was handed down  
25 saying, Scientology, your appeal is premature because there's  
26 a pending cross-complaint. Thereafter, the appeal was re-  
27 initiated, and at that point, these provisions had full force  
28 in effect. That's the point.

1 THE COURT: Where is the -- where is the evidence  
2 concerning the later appeal?

3 MR. GREENE: It's coming up. It's in the --

4 THE COURT: Can you answer my question, or would you  
5 rather not?

6 MR. GREENE: No, I would like to answer your  
7 question, I'm sorry --

8 THE COURT: Please do.

9 MR. GREENE: -- Your Honor; you're a vigorous  
10 questioner, and I'm doing my best to keep up. The answer,  
11 directly: the next in order, which is the 1-15-87 DCA -- DCA  
12 order denying rehearing. Then the next in order, the 3-11-87  
13 Cal Supreme Court order denying review. Then the next in  
14 order, the unopposed motion by Scientology in the trial court  
15 to withdraw the memo -- memorandum of intended decision. Then  
16 the next in order which is -- is Y, would be I-Y on my  
17 labeling, the February 2, '87 minute order from Judge  
18 Breckenridge denying Scientology's unopposed motion to  
19 withdraw his memorandum of intended decision.

20 THE COURT: Uh-huh.

21 MR. GREENE: And the next in order is the second  
22 notice of appeal filed by Scientology in Armstrong I on  
23 February 9th of 1987.

24 THE COURT: Yes.

25 MR. GREENE: Then what we've got is -- is the  
26 appellate court's decision, which is published. And at 232  
27 Cal Ap 3rd 1060, which I've not -- I mean, that's precedent  
28 for this Court. Thereafter, there's the California Supreme

1 Court denial of review of the second Armstrong appeal, said  
2 denial being filed on October 17th, 1991. Also, and then  
3 there's the remittitur in Armstrong I, and then there are the  
4 exhibits of the side agreement in Armstrong I.

5 THE COURT: Okay, I understand. Do you have any  
6 response you want to make to all that?

7 MR. WILSON: Well, Your Honor, we don't have  
8 objections to those other ones. Mr. -- you asked Mr. Greene  
9 what was the next thing that happened, and you'll note that  
10 what we're talking about now is an unpublished Court of Appeal  
11 opinion in December of 1990, and he said the next thing that  
12 happened, and then he referred to these 68, 69, 70 --

13 THE COURT: The objection is overruled.

14 MR. WILSON: Thank you, Your Honor.

15 THE COURT: Anything else?

16 MR. WILSON: 82.

17 THE COURT: 82?

18 MR. WILSON: 82, which I think you have as 83.

19 THE COURT: I-JJ, or I-LL?

20 MR. WILSON: LL.

21 THE COURT: All right. That's Senate bill --

22 MR. WILSON: Senate bill 711.

23 THE COURT: -- 711. Where is that, please?

24 MR. WILSON: That is in Volume --

25 MR. GREENE: That's Volume II.

26 MR. WILSON: -- II of -- of evidence in support of  
27 defendant's opposition to Scientology's motion for preliminary  
28 injunction.

1 THE COURT: All right. Ms. Cervantes, will you give  
2 me that one.

3 (Pause)

4 THE COURT: Some kind of a double -- okay.

5 Okay. I have that. Let me go to Exhibit LL. All  
6 right.

7 MR. WILSON: That's -- if it's offered -- first of  
8 all, I'm not sure what it's offered to do. But it would be my  
9 position that it's irrelevant to any factual matter that's at  
10 issue here. Now, if it's offered by Mr. Greene as some kind  
11 of precedent, then I don't believe it's -- he hasn't requested  
12 judicial notice and I don't believe it is a proper subject for  
13 a judicial notice. It's a bill -- it's not law -- if it was  
14 law, it could be cited as law. And it hasn't been passed.

15 THE COURT: Maybe he's -- maybe he's -- do you --  
16 why do you offer it, Mr. Greene?

17 MR. GREENE: In order to show that there are very  
18 serious public policy concerns regarding the type of agreement  
19 which Scientology seeks to enforce here, insofar as --

20 THE COURT: How does this show that? This is a  
21 piece of legislation that was offered on the 6th of March,  
22 1991. Has it ever been adopted?

23 MR. GREENE: No.

24 THE COURT: Is it still alive?

25 MR. GREENE: Yes.

26 THE COURT: So as of now, it's as-yet unsuccessful  
27 argument. So what -- how does it help your client at all? Or  
28 how does it help me at all?

1 MR. GREENE: Well, I think how it helps you, Your  
2 Honor, is that it provides specific language on a public  
3 policy basis why so-called gag agreements are a violation of  
4 public policy.

5 THE COURT: What specific language? This is just  
6 something that Senator Locke here introduced on the floor of  
7 the Senate, and it was amended apparently five times. And  
8 what you've given me is one of the -- iterations of it.

9 I'm going to overrule the objection. And you should  
10 recognize that during the course of your argument before me,  
11 which is going to be, now apparently, rather circumscribed in  
12 time, although you can deal with any points you'd like, that  
13 might not be a tremendously significant thing for you to argue  
14 about. Go ahead.

15 MR. WILSON: So the objection is overruled, Your  
16 Honor?

17 THE COURT: That's correct.

18 MR. WILSON: Next, the declaration which is 83, I  
19 believe; you probably have it as 84, MM, Declaration of Vickie  
20 Aznaran. Again, the declaration of Ms. Aznaran which is --  
21 which doesn't mention Mr. Armstrong, which is in 1988, talking  
22 about things that happened in 1986, 1987 --

23 THE COURT: Your theory -- so your objection is  
24 relevancy?

25 MR. WILSON: Yes, Your Honor. And also 352 and --

26 THE COURT: Your theory?

27 MR. GREENE: Relevancy is that this shows the kind  
28 of conduct which Scientology sought to suppress Vickie Aznaran



1 from expressing through its use of its motion for preliminary  
2 injunction in the Aznaran case. And that it parallels and is  
3 very close --

4 THE COURT: Should I make a ruling in it any  
5 different from the ruling I made in Exhibit 49 or 50, that is,  
6 the declaration dated August 9, 1988?

7 MR. GREENE: Yes, because I've given you a different  
8 reason, and I believe a valid reason, to do so.

9 THE COURT: Why?

10 MR. GREENE: Because Scientology sought, through its  
11 motion for preliminary injunction which is in evidence before  
12 us now, in the Aznaran case, to enforce a settlement agreement  
13 substantially identical to that which it is seeking this Court  
14 to enforce against Armstrong.

15 The information which Scientology wants to suppress  
16 is exemplified in the declaration that's before the Court.  
17 And I submit --

18 THE COURT: Where is that declaration?

19 MR. GREENE: That is in Volume II of Armstrong's  
20 evidence in Marin County, file-stamped March 16th, 1992.

21 THE COURT: Exhibit --

22 MR. GREENE: MM.

23 THE COURT: Exhibit double-M?

24 MR. GREENE: Yes.

25 THE COURT: All right. Just a second.

26 (Pause)

27 THE COURT: Where in particular?

28 MR. GREENE: Your Honor, the discussion is about

1 fair game on Page 1; the discussion is about Rehabilitation  
2 Project Force on Pages 2, 3 and 4 --

3 THE COURT: Just a second.

4 (Pause)

5 THE COURT: State your theory, then, of  
6 admissibility.

7 MR. GREENE: My theory of admissibility is that this  
8 document exemplifies factual information which Scientology  
9 seeks to suppress or sought to suppress by injunction in  
10 Aznaran. And that that shows what Scientology is seeking to  
11 suppress here in Armstrong. What Armstrong says and what  
12 Vickie Aznaran says, although specific to themselves, is very  
13 similar.

14 THE COURT: The objection is sustained.

15 MR. WILSON: Thank you, Your Honor. And finally, I  
16 believe, there are two -- two exhibits to Mr. Armstrong's  
17 declaration that we did not handle with the declaration  
18 itself, and those are -- I think they're your Items 86 and 87;  
19 they would be Exhibit Roman II-A and Roman II-B.

20 THE COURT: Just a second.

21 (Pause)

22 THE COURT: Would you help me with locating the  
23 Armstrong declarations?

24 (Pause)

25 MR. WILSON: I think it's in the same packet you  
26 just had, Your Honor. In fact, it should be about a half inch  
27 lower down.

28 THE COURT: So it should have a face page that says

1 what?

2 MR. WILSON: That -- if they're attached to Mr.  
3 Armstrong's declaration and there's a page in between the  
4 declaration that says Exhibit A in the lower left corner.

5 THE COURT: That might be, but what should be  
6 exhibit --

7 MR. WILSON: The first page of the exhibit --

8 THE COURT: -- what should the face page be?

9 MR. WILSON: Of the exhibit, Your Honor?

10 THE COURT: Yes. No, what's the face page --

11 MR. WILSON: Oh, you mean of the packet.

12 THE COURT: -- of the packet?

13 MR. WILSON: The packet is evidence in support of  
14 defendant's opposition to Scientology's motion for preliminary  
15 injunction, Volume Roman numeral II.

16 THE COURT: All right. I have that.

17 MR. WILSON: Okay. And it's -- it's about two-  
18 thirds of the way down.

19 THE COURT: What page is it?

20 MR. WILSON: Well, it's -- I wish I could tell you.

21 THE COURT: The page numbers are written on my copy.

22 MR. WILSON: I don't have page numbers. Are page  
23 numbers on all of your pages?

24 THE COURT: No.

25 MR. WILSON: Okay.

26 THE COURT: The person who prepared this -- I see  
27 what you mean. The person who prepared this was intermittent.  
28 Go ahead. Tell me where you want me to look. See if I can

1 find it.

2 MR. WILSON: I'm trying. There's -- it appears  
3 right after a declaration of Gerald Armstrong -- of -- Gerald  
4 Armstrong. I'd be happy to hand my copy up to you. If you'd  
5 like.

6 MR. GREENE: Your Honor, we'll short-circuit this  
7 and concede the objection to both II-A and II-B.

8 THE COURT: Sustained.

9 MR. WILSON: Okay. That concludes our objections.

10 THE COURT: And there is no objection to Exhibit II-  
11 N, that would be No. 98? Okay.

12 MR. WILSON: No.

13 THE COURT: All of the other materials proffered by  
14 the defendant are received in evidence, subject only to the  
15 rulings on objections heretofore made.

16 Counsel, I'm going to go into recess now. I order  
17 you back here tomorrow morning at half past 8:00, ready to go  
18 forward with brief arguments on the merits that you think are  
19 disclosed by the materials that have been received into  
20 evidence. There will be no further submittal of evidence and  
21 no further submittal of written materials.

22 Visualize that your arguments are going to be  
23 concluded in relatively brief compass, and that I will submit  
24 your clients' case and rule on your clients' case following my  
25 consideration of your arguments. Thank you very much.

26 MR. GREENE: Your Honor, one housekeeping matter  
27 before you leave regarding your order to show cause?

28 THE COURT: Yes.

1 MR. GREENE: I don't know. I am scheduled to go out  
2 to trial --

3 THE COURT: If you have any problem, deal with it  
4 tomorrow. Figure out what your schedule is --

5 MR. GREENE: Okay. I just don't know what's going  
6 to happen, then, if I'm ordered to two courts, to be in  
7 different places, I'm going to be split in half. I just want  
8 to let you know that.

9 PROCEEDINGS CONCLUDED AT 4:00 P.M.

10 (Court is Adjourned)

11 \* \* \* \* \*

CERTIFICATION

I (WE) CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM  
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE  
ABOVE-ENTITLED MATTER.

PARRIS TRANSCRIPTS  
P.O. BOX 41754  
LOS ANGELES, CA 90041-9998  
(213) 254-4157

GAIL I. PARRIS  
OWNER

Sharon Debra  
SIGNATURE OF TRANSCRIBER

9-30-92  
DATE